

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEBRASKA

3 UNITED STATES OF AMERICA,)
4)
5 Plaintiff,) 8:04CR-384
6) September 19, 2005
7 vs.) 8:40 a.m.
8) Omaha, Nebraska
9 JEROME BASS,)
10)
11 Defendant.)

12 VOLUME I
13 TRANSCRIPT OF TRIAL PROCEEDINGS
14 BEFORE THE HONORABLE JOSEPH F. BATAILLON
15 UNITED STATES DISTRICT JUDGE, AND A JURY

16 A-P-P-E-A-R-A-N-C-E-S

17 FOR THE PLAINTIFF: Jennie Dugan-Hinrichs
18 Assistant United States Attorney
19 1620 Dodge Street
20 Suite 1400
21 Omaha, Nebraska 68102

22 FOR THE DEFENDANT: Michael T. Levy
23 Attorney at Law
24 P.O. Box 6309
25 Omaha, Nebraska 68106

26 COURT REPORTER: Allan G. Kuhlman
27 111 S. 18th Plaza
28 Suite 3122
29 Omaha, NE 68102
30 (402) 661-7305

31 Proceedings recorded by mechanical stenography, transcript
32 with computer.

1 (At 8:40 a.m. on September 19, 2005, with counsel
2 for the parties and the defendant present, the following
3 proceedings were had out of the presence of the jury:)

4 THE COURT: This is the case of the United States
5 of America versus Jerome Bass, 8:04CR-384.

6 Would the attorneys please enter their appearance
7 for the record.

8 MS DUGAN-HINRICHS: Good morning, Judge, Jennie
9 Dugan-Hinrichs for the government.

10 MR. LEVY: Your Honor, Michael Levy for the
11 defendant, who is present.

12 MS. DUGAN-HINRICHS: Your Honor, Officer Jeff
13 Gassaway is the case agent in this case and I request that
14 he assist me by sitting at counsel table during this trial.

15 THE COURT: Your request is granted.

16 MS. DUGAN-HINRICHS: Thank you, Your Honor.

17 THE COURT: We're here today for trial. There are
18 some preliminary matters that we need to take up and we will
19 do that at this juncture.

20 First of all, I've put together a voir dire. Does
21 anybody have an objection to the questions I have for the
22 voir dire? Ms. Dugan-Hinrichs?

23 MS. DUGAN-HINRICHS: No, Your Honor.

24 THE COURT: Mr. Levy?

25 MR. LEVY: No objections, but I have a suggestion.

1 It seems to me, as in most dry conspiracy cases, the jury is
2 going to hear a lot about plea agreements and departures and
3 mandatory minimums and sentencing guidelines, that kind of
4 stuff.

5 I'm just thinking that it might be a good idea to
6 educate them going into the evidence as to what a mandatory
7 minimum is, what a plea agreement is, what a departure is.

8 THE COURT: Do you have any objection to that,
9 Ms. Dugan-Hinrichs?

10 MS. DUGAN-HINRICHS: No, sir, I don't.

11 THE COURT: Anything else, Mr. Levy?

12 MR. LEVY: Not in that regard.

13 THE COURT: Is twenty minutes for voir dire for the
14 government sufficient, Ms. Dugan-Hinrichs?

15 MS. DUGAN-HINRICHS: Yes, Your Honor.

16 MR. LEVY: More than sufficient.

17 MS. DUGAN-HINRICHS: Your Honor, I just noted one
18 suggestion in my notes.

19 Page five of your voir dire you talk about this
20 case involves cocaine. Could you say crack cocaine?

21 THE COURT: Sure.

22 MS. DUGAN-HINRICHS: I believe the same thing is in
23 the jury instructions.

24 THE COURT: Anything else? Let's talk about
25 initial instructions.

1 Mr. Levy, I know that you have subpoenaed some
2 witnesses.

3 I think that I would like, if I can, to get from
4 you a list of potential witnesses for the defendant so at
5 least we can run them by the jury.

6 And I'm not going to say the defendant is going to
7 call the witnesses, but at least here are the witnesses that
8 may be called. Do you have a list?

9 MR. LEVY: JeVaughn Erwin. Lamar Bass. Gregory
10 Tripp. Bobby Johnson. Jerome Daniels. Rashad McKay.
11 Cora Bristol. Rodney Ronk.

12 THE COURT: They are all from Omaha?

13 MR. LEVY: Yes. There's a records custodian for
14 Cricket Communication. Paquita Davis. Son Spurlock.
15 Eric Lee. Jason Sails.

16 Then I have subpoenaed a custodian of records of
17 the Omaha Police Department and a custodian of records of
18 St. Joe's Hospital, but it's my understanding that the
19 foundation for those documents is going to be waived and so
20 I will not be calling the record custodian to lay
21 foundation.

22 THE COURT: Is that agreeable, Ms. Dugan-Hinrichs?

23 MS. DUGAN-HINRICHS: It is, Your Honor.

24 THE COURT: Any other witnesses then, Mr. Levy?

25 MR. LEVY: It's hard to tell, but I don't think so.

1 THE COURT: Let's talk about opening. How much
2 time do you need for your opening statement?

3 Ms. Dugan-Hinrichs?

4 MS. DUGAN-HINRICHS: Twenty minutes, half hour
5 tops.

6 THE COURT: So thirty minutes each?

7 MR. LEVY: That's more than enough.

8 THE COURT: Now let's talk about initial jury
9 instructions.

10 You noted that in the jury instructions I said
11 cocaine instead of crack cocaine.

12 MS. DUGAN-HINRICHS: Instruction 11 I think it
13 appears three times.

14 THE COURT: It should say cocaine base each time it
15 says cocaine, correct?

16 MS. DUGAN-HINRICHS: Correct.

17 THE COURT: Instruction 11, number one, number
18 three, and number four. Any others that you see?

19 MS. DUGAN-HINRICHS: I don't believe so.

20 THE COURT: For the record, we'll change all those.

21 MS. DUGAN-HINRICHS: Instruction 19 and 24 appear
22 to be the same regarding the credibility of cooperating
23 witnesses.

24 THE COURT: Instruction 24 being an instruction
25 that we're giving at the close of evidence to see whether it

1 needs to be given again. It may not have to be.

2 I think the confusion sometimes is whether this is
3 a cooperating witness or -- I don't know cooperating,
4 witnesses and governmental informants, but I don't know. So
5 let's just wait. We have it at least once now and we'll
6 talk about whether we need it again at the end of evidence.

7 But I agree with you it generally does not need to
8 be repeated.

9 For the record, we're talking about Instructions 1
10 through 19 for initial instructions. Any other objections?
11 Ms. Dugan-Hinrichs?

12 MS. DUGAN-HINRICHS: No, sir.

13 THE COURT: Mr. Levy?

14 MR. LEVY: I'm trying to think. In that regard,
15 there is an instruction on witness testifying under grant of
16 immunity, but I don't think we have that in this case.
17 There's also an accomplice instruction.

18 THE COURT: If you have one, I'll certainly look at
19 it.

20 MR. LEVY: It's an Eighth Circuit instruction.
21 I'll have it.

22 THE COURT: I know there is an instruction on plea
23 agreements, and that's not included here.

24 If you want that you need to let me know, and then
25 you said the accomplice instruction, but if there is one,

1 let me know about that, too.

2 Then there is an instruction on whether somebody is
3 a felon or not.

4 I don't know whether that applies, so I have not
5 done any of these instructions, because I don't know what
6 the government's case in chief is going to be.

7 But you're assuming that there will be plea
8 agreements introduced into evidence, correct?

9 MR. LEVY: There is a list of them on the exhibit
10 list and I've been furnished with the criminal histories of
11 all the cooperating witnesses and there are persons
12 convicted of felonies as well as crimes of dishonesty.

13 THE COURT: I think Instruction 19 covers that, but
14 if you want an additional instruction you need to let me
15 know.

16 MR. LEVY: Would you be inclined to give it as a
17 preliminary?

18 THE COURT: Absolutely, or before the testimony of
19 the witness that has to do with the plea agreement, but I
20 think Instruction 19 covers that.

21 MR. LEVY: I don't see in 19 that it does with
22 felons or people who have been convicted of crimes of
23 dishonesty.

24 I ask that that be given. I think as long as
25 you're going to instruct the jury on things like downward

1 departure and mandatory minimums that the plea agreement
2 instruction be given as well.

3 THE COURT: I think that's what 19 is. 19 says,
4 "Some of the witnesses may have entered into an agreement
5 with the United States Attorney's Office which will provide
6 in return for their assistance the government may dismiss
7 certain charges or may recommend a less severe sentence."

8 Then it goes on. That's the standard instruction.
9 Ms. Dugan-Hinrichs, did you find an instruction on prior
10 felony conviction?

11 MS. DUGAN-HINRICHs: Judge, in Instruction 25,
12 which I know is the closing instruction, deals with
13 impeachment of witness, prior conviction, plea agreements.

14 THE COURT: Do you want to make that Instruction
15 20?

16 MS. DUGAN-HINRICHs: Sure.

17 MR. LEVY: That's fine.

18 THE COURT: We'll make Instruction 25 Instruction
19 20 and we'll add it to the preliminary instructions.

20 MR. LEVY: I received a notice of 404(b) evidence.
21 Just to alert you, I prefer that that 404(b) instruction be
22 given at the time that the evidence comes in, which is from
23 witness Jacara Baker.

24 THE COURT: When is Ms. Baker coming in?

25 MS. DUGAN-HINRICHs: Tuesday.

1 THE COURT: We'll prepare the 404(b) instruction.

2 MR. LEVY: There is testimony, at least in her
3 proffer, testimony regarding marijuana, and I would like an
4 indication whether that testimony will be permitted or not.

5 THE COURT: In what respect? You want to bring it
6 out?

7 MR. LEVY: No. I don't believe it's relevant.

8 THE COURT: With respect to buying or selling
9 marijuana from your client?

10 MR. LEVY: Yes.

11 THE COURT: And the government's position is that
12 drugs are drugs?

13 MS. DUGAN-HINRICHS: It is, sir, and the defendant
14 in his own statement to the police officer talks about
15 marijuana.

16 So it will come out in his confession. It will
17 come out if the defendant takes the stand.

18 THE COURT: That he was buying and selling
19 marijuana?

20 MS. DUGAN-HINRICHS: Or delivering marijuana or --
21 I think in the testimony, in his statement to the police
22 officers, he admitted to delivering marijuana.

23 MR. LEVY: It doesn't have to come out.

24 THE COURT: May I see the statement? Part of
25 Mr. Bass's defense is that he was delivering things to

1 people and he didn't know it was crack cocaine. He thought
2 it might be marijuana. How do you get around that?

3 MR. LEVY: Ms. Dugan-Hinrichs knows that the
4 defendant's defense is going to be he didn't say as Officer
5 Gassaway testifies.

6 THE COURT: I think that goes to issues of
7 credibility, whether it's marijuana or not marijuana. I am
8 going to overrule your motion in limine. Anything else,
9 Ms. Dugan-Hinrichs?

10 MS. DUGAN-HINRICHs: Judge, I'm not sure if this is
11 best addressed as an oral 404(b) motion at this time or not.

12 There is going to be some evidence, or I would like
13 to present evidence of the defendant exerting undue
14 influence on the witnesses in this trial to try to prevent
15 them from testifying.

16 And also defendant's witness Lamar Bass exerting
17 influence or threatening witnesses in an attempt to try to
18 get them not to testify at today's trial.

19 I have done some research it on it, sir, and I
20 realize it is not a charge that is contained in the
21 indictment, but that the case law talks about that this is
22 particularly probative to the issue of guilt in this
23 situation.

24 I bring it forward now actually so I know how to
25 handle it when the issue does come up.

1 Officer Gassaway conducted interviews of those
2 people regarding things the defendant said.

3 Those witnesses are going to testify to things the
4 defendant said, and also things that Lamar Bass said about
5 not testifying.

6 And so, again I don't know if a formal 404(b)
7 motion is required, or how best to handle this situation.

8 THE COURT: I think you have to give the defendant
9 notice of what the testimony may or may not be, because -- I
10 don't know.

11 It seems to me you have to give him notice of what
12 it is, whether you do it under 404(b) or not, so that it can
13 be responded to in due course. I assume there is no report
14 on this issue?

15 MS. DUGAN-HINRICHS: Well, sir, the defendant did
16 have notice.

17 Just so that you are aware, the two people who had
18 been contacted by Mr. Bass called and left voice mail
19 messages from --

20 THE COURT: Which Bass?

21 MS. DUGAN-HINRICHS: Jerome Bass, left voice mail
22 message for Officer Gassaway.

23 He produced a report subsequent to that and a tape
24 which was the recording of those voice mails. Those were
25 produced to Mr. Levy last week.

1 In preparing witnesses late Friday afternoon there
2 were conversations that took place, a phone call in which
3 one of the witnesses talked directly to the defendant. It
4 was a three-way call.

5 THE COURT: The same two people?

6 MS. DUGAN-HINRICHS: That one deals with Mr. Karlos
7 Harper and Jerome Bass.

8 A witness to that conversation is a lady named
9 Marie Harper.

10 THE COURT: We have Karlos Harper as one of your
11 witnesses that has been contacted by the defendant allegedly
12 and then who else by the defendant?

13 MS. DUGAN-HINRICHS: Tamika Rush.

14 THE COURT: So Rush and Harper have been identified
15 to the defendant, defendant's counsel, that you intend to
16 present this evidence?

17 MS. DUGAN-HINRICHS: Marie Harper and Tamika Rush,
18 but not Karlos.

19 I didn't know until Friday that Karlos Harper had a
20 conversation with the defendant.

21 Additionally, Judge, the defendant's brother is an
22 individual named Lamar Bass.

23 Lamar Bass is down at CCA. They were all
24 transported up here together in a van for this trial.

25 Conversations took place in that van between Lamar

1 and Karlos Harper; Lamar Bass and Jerry Coleman.

2 THE COURT: I'm not inclined to introduce evidence
3 of any conversations that took place in a van on the way up
4 from CCA between Lamar Bass and cooperating witnesses,
5 unless you present me some factual information that I
6 believe is relevant, but generally speaking not.

7 The two sets of witnesses probably should have been
8 sent up individually, as opposed to together.

9 So we've created a situation in which we've
10 basically thrown Bass in the back of a van and waited to see
11 if it was going to smoulder and ignite.

12 If Lamar Bass was in the jail and sought people out
13 and conveyed threats, that's one thing.

14 But for us to put them in a van together and not
15 expect something to happen is a whole different deal. So I
16 know specifically what you are talking about.

17 MS. DUGAN-HINRICHS: Sir, he also did seek some of
18 these people out while at CCA before any of this van stuff
19 took place.

20 Just from my perspective, my theory of the case so
21 to speak, sir, Lamar Bass, the defendant's older brother,
22 did a significant number of things to protect his brother
23 and also to train him in this crack dealing game, so to
24 speak.

25 These other people are witnesses to this and so

1 Lamar's influence, not only on the defendant, but on all of
2 these other people, becomes very important.

3 There was some retaliation that Lamar attempted to
4 commit when his little brother was injured.

5 And so Lamar's influence is part of that bigger
6 picture about his influence, not only on the defendant, but
7 on the witnesses, this group of people that we are talking
8 about.

9 So that is why I want to present that evidence, to
10 show his improper influence on these people and there are
11 threats, Judge.

12 He talks to one of the witnesses about when they
13 get out kind of situation.

14 I know this isn't the trial of Lamar Bass, and I'm
15 not trying to make it be such, but it directly affects and
16 corroborates the same kind of thing Jerome is saying, Tamika
17 Rush and Marie Harper and Karlos Harper.

18 THE COURT: Mr. Levy?

19 MR. LEVY: Well, as much as I hate to concede any
20 point, I think the law is pretty clear that efforts by the
21 defendant to influence or tamper with or intimidate
22 witnesses comes in as consciousness of guilt.

23 But what Lamar Bass does on his own time is what
24 Lamar Bass does.

25 Unless you can connect it that he's doing it at the

1 defendant's insistence or encouragement --

2 THE COURT: Here is the problem I have. It's
3 charged as a conspiracy and Lamar Bass is part of the
4 conspiracy.

5 MR. LEVY: The conspiracy is over. Lamar Bass was
6 arrested in December of 2002; he was convicted in 2003.

7 Any conspiracy of which Lamar Bass would have been
8 a member is two years past.

9 THE COURT: Here is what I am going to do. If you
10 have evidence of something that Lamar Bass did,
11 Ms. Dugan-Hinrichs, I would like to have a proffer before
12 you enter the evidence.

13 So if you've got a witness that you think you are
14 going to have testify with respect to any threats by Lamar
15 Bass, then I need to hear that outside the presence of the
16 jury.

17 And the other issue is whether Lamar Bass testifies
18 and if he testifies, then, of course, that goes to his
19 credibility.

20 MR. LEVY: I am not talking about impeachment.

21 THE COURT: I understand that, and we may be on the
22 edge of that.

23 I don't know the answer, because I don't know
24 whether Lamar Bass is going to testify.

25 MR. LEVY: He will.

1 THE COURT: If he testifies, then we have the same
2 problem.

3 MR. LEVY: I am not saying if he testifies
4 everything is fair game.

5 MS. DUGAN-HINRICHS: With regards to that, sir, I
6 did find an Eighth Circuit Model Jury Instruction that talks
7 about this issue. I didn't have time to go pull it. I'm
8 looking at a case --

9 THE COURT: Let's just wait.

10 MS. DUGAN-HINRICHS: It won't come up in the
11 preliminary instructions.

12 THE COURT: If you have an instruction you want me
13 to give at the close of evidence, then give it to me at that
14 time, and if you have a case, give me a copy and that would
15 be helpful.

16 MS. DUGAN-HINRICHS: Certainly.

17 THE COURT: The last issue that I want to take up
18 is with the government.

19 You've got this pled as a conspiracy to distribute
20 over five hundred grams of crack cocaine.

21 How much does the government intend to prove for
22 purposes of sentencing?

23 MS. DUGAN-HINRICHS: I think it's only fifty,
24 Judge.

25 THE COURT: I said five hundred? It's fifty.

1 That's the ten to life cutoff, so that is what I was getting
2 at.

3 How much crack cocaine is the government seeking?
4 Is it just over fifty or more?

5 MS. DUGAN-HINRICHS: Judge, I think we are closer,
6 on the light end, 78.51 grams.

7 So we're in the last two categories on your verdict
8 form. At least five hundred, but less than 1.5; or at least
9 1.5.

10 I'm going to argue it's over 1.5, based on some of
11 the evidence I expect to come in.

12 THE COURT: Any other enhancements the government
13 wishes to pursue in this case?

14 MS. DUGAN-HINRICHS: Could I have a moment, Judge?

15 THE COURT: Yes.

16 MS. DUGAN-HINRICHS: Your Honor, it's our position
17 we would probably be seeking an obstruction enhancement
18 regarding the defendant's attempt to influence witnesses
19 called by the government in this case.

20 THE COURT: In my opinion the government has two
21 choices. One is to get them to go along with a non-jury
22 trial in the context of this case or to separately charge
23 obstruction and I think that there is a separate charge for
24 obstruction.

25 MS. DUGAN-HINRICHS: There is a tampering charge.

1 THE COURT: If you want him indicted on that, then
2 indict him on that, but we are not going to do it here.

3 MS. DUGAN-HINRICHS: You are not going to give the
4 two bumps for obstruction unless I indict him?

5 THE COURT: That's correct. If we do that, I don't
6 know that we can do that in the context of this trial.

7 It's a separate issue and I suppose we could have a
8 separate trial.

9 At this late date I don't think it would be a good
10 idea to indict him today and then continue the case.
11 Mr. Levy, what is your position?

12 MR. LEVY: What you just said. Charge him or
13 forget about it for this trial.

14 THE COURT: You are not willing to waive a jury
15 trial on that issue?

16 MR. LEVY: I'm not.

17 THE COURT: Anything else, Ms. Dugan-Hinrichs?

18 MS. DUGAN-HINRICHS: Your Honor, I only point this
19 out because I'm not sure -- we can address it as it comes
20 up. Nothing else preliminarily.

21 THE COURT: Mr. Levy?

22 MR. LEVY: Nothing.

23 THE COURT: We will be in recess until the jury
24 comes up.

25 (9:20 a.m. - Recess Taken)

1 (At 9:45 a.m. on September 19, 2005, with counsel
2 for the parties and the defendant present, the following
3 proceedings were had in the presence of the jury:)

4 THE COURT: Welcome to the District of Nebraska for
5 the Federal District Court.

6 I understand that you've already been qualified to
7 sit as jurors by Judge Smith Camp.

8 So today we will get on with the case that is
9 already called before the court and that's the United States
10 of America versus Jerome Bass. 8:04CR-384.

11 Is the government prepared and ready for trial,
12 Ms. Dugan-Hinrichs?

13 MS. DUGAN-HINRICHS: Yes, sir.

14 THE COURT: Is the defendant prepared for trial,
15 Mr. Levy?

16 MR. LEVY: Your Honor, the defendant is ready.

17 (Voir Dire Proceedings Reported - Not Transcribed)

18 (Jury Selected & Sworn)

19 THE COURT: Please be seated, ladies and gentlemen.
20 At this time I'm going to read to you the initial jury
21 instructions.

22 You will have a copy of these instructions
23 throughout the course of the trial.

24 You also have a pad of paper to write notes on.
25 Some people like to write notes on the jury instructions,

1 but if you do that you have to understand that we may take
2 the instructions away because at the end of case the
3 evidence may be a little different than we anticipated, or
4 there may be some changes in the evidence, and we'll take
5 back some of these initial jury instructions and substitute
6 others in their place.

7 So I would suggest that you not write notes on the
8 jury instructions because you might lose them.

9 So with that I'll read the jury instructions and
10 you're welcome to read along or otherwise.

11 (Preliminary Jury Instructions Read)

12 THE COURT: With that, ladies and gentlemen, the
13 lawyers have an opportunity to give opening statements.

14 What they say is not evidence, but the lawyers are
15 certainly entitled to tell you what they believe the
16 evidence will be to give you an overview of what the case is
17 all about.

18 The government has the burden of proof, so the
19 government will go first. Ms. Dugan-Hinrichs, you may
20 proceed.

21 MS. DUGAN-HINRICHS: Thank you, Judge. May it
22 please the court, counsel.

23 Good afternoon, ladies and gentlemen of the jury.
24 Thank you for your attention thus far in this case.

25 As the judge has told you, my name is Jennie

1 Dugan-Hinrichs and I represent the government.

2 This is a conspiracy case in which a grand jury has
3 returned a one count indictment against the defendant,
4 Jerome Bass, also known as Rommie Bass.

5 The indictment charges that from an unknown date,
6 but at least as early as January 1, 2001, up to and through
7 December 31, 2003, the defendant did knowingly conspire and
8 agree with others to distribute and possess with intent to
9 distribute over fifty grams of crack cocaine.

10 Many witnesses will be called in this case to prove
11 the defendant's role in this case beyond a reasonable doubt.

12 Officer Jeffrey Gassaway will testify in this case
13 and he will tell you about his investigation of Jerome
14 Bass's crack distribution activity.

15 He will also provide some historical or background
16 information about how this case and others like it were
17 indicted as a result of an ongoing investigation of North
18 Omaha gangs.

19 He will explain the investigation techniques that
20 were used in this case and explain why other investigative
21 techniques were not used.

22 Officer Gassaway will specifically talk about the
23 37th Street Gang.

24 He will tell you about their gang-banging
25 activities and define those terms for you.

1 He will talk about its members, the 37th Street
2 Associates, and other gangs the 37th Street Gang did
3 business with, particularly crack business with.

4 Finally, Officer Gassaway will describe to you in
5 the defendant's own words what he said when he was
6 interviewed by Officer Gassaway.

7 In this statement the defendant admitted his
8 involvement in this conspiracy and dealing crack with his
9 co-conspirators.

10 The government will also present to you a witness
11 by the name of Mark Langan.

12 He's a recently retired Omaha Police Department
13 narcotics sergeant and he will share with you some of his
14 twenty-five years of experience, specifically as it relates
15 to crack cocaine.

16 He will help describe how this drug is packaged,
17 the quantities, how it's sold, so that you will have a
18 better understanding of how the crack sales occur in the
19 North Omaha community.

20 You will also hear from a number of cooperating
21 witnesses in this case.

22 There will be men and one woman who are currently
23 serving a federal sentence for crack distribution.

24 Each one of these cooperating witnesses will give
25 you a personal eyewitness account of the defendant's

1 purchase and sale of crack cocaine.

2 They will describe to you in detail what they
3 observed the defendant do and say which implicates himself
4 in this conspiracy.

5 The cooperating witnesses will help you understand
6 the cast of characters and the role they each played in the
7 37th Street conspiracy and also help better explain the
8 defendant's role.

9 All of the cooperating witnesses are former gang
10 members, although not of the same gang.

11 Most have prior criminal histories, and you'll hear
12 about those, and all are testifying pursuant to plea
13 agreements with the government.

14 After I have presented to you all of the evidence
15 in this case by way of the testimony and exhibits, the
16 defendant will have an opportunity to put on their case, if
17 they choose.

18 At the conclusion of all of the evidence I will
19 have the opportunity to come back once again and argue
20 before you what the evidence showed.

21 And it's at that time that I will ask you to return
22 a guilty verdict. Thank you.

23 THE COURT: Mr. Levy?

24 MR. LEVY: If it please the court, Judge Bataillon,
25 Ms. Dugan-Hinrichs, members of the jury, good afternoon.

1 I don't want to overdramatize what is going to
2 happen in this case, but you are about to embark on a
3 journey of seeking the truth.

4 Seeking to answer a question, between January of
5 2001 and December of 2003 was Jerome Bass a drug dealer?

6 If the answer to that question is yes, you will
7 convict him.

8 If you answer that question either no, or I don't
9 know, you will acquit him.

10 Your job will be to pass judgment on a fellow human
11 being.

12 It's an awesome responsibility, but it's a
13 responsibility that is yours.

14 And if you will recall, on voir dire you promised
15 that you would approach this responsibility objectively,
16 without passion, without prejudice, rely on the evidence and
17 nothing more.

18 The evidence is going to show you a series of facts
19 that make it highly unlikely that Jerome Bass is a drug
20 dealer.

21 There will be a picture of Jerome Bass painted that
22 you will have to then go back and ask yourself is this guy a
23 drug dealer?

24 Is what I've heard in this case consistent with a
25 young man dealing drugs?

1 He's not a gang member. There will be no evidence
2 that he was a gang member. And, by the way, being a gang
3 member is not illegal.

4 The prosecution will produce for you, I think at
5 last count eight, maybe nine individuals, all of whom are
6 serving hundreds of months in federal prison for doing what
7 Jerome Bass is accused of doing.

8 Each and every one of those individuals has
9 something to gain from testifying for the prosecution.

10 The evidence will not only just come out on direct
11 examination of these witnesses by the prosecutor, but I will
12 be entitled to cross-examine the witnesses, establish if
13 they are inconsistent, the changing of their stories, if
14 they have an ax to grind, and if they are just flat out
15 lying.

16 Let me give you a couple of examples.
17 Ms. Dugan-Hinrichs and I know generally what the case is
18 going to be about.

19 We know what the evidence is going to be. We know
20 what the testimony is going to be.

21 We don't try cases by ambush, so I know generally
22 what her witnesses are going to say.

23 There is a witness named Karlos Harper. He is a
24 cousin of Mr. Bass.

25 He was raised by Mr. Bass's mother. He lived in

1 Mr. Bass's house.

2 I don't know what he's going to tell you. He has
3 testified three different times in three different
4 directions.

5 He has written letters recanting and signed
6 statements of recantation.

7 That's the kind of thing you are going to have to
8 look at.

9 More than just what the witness testifies to over
10 the next few days, but what has he said in the past?

11 There's a witness named Jerry Coleman. He's going
12 to testify that Mr. Bass and a gentleman named JeVaughn Erwin
13 were in the crack cocaine business together and they sold
14 and bought from Jerry Coleman.

15 JeVaughn Erwin is a convicted drug dealer. I have
16 subpoenaed him.

17 He will testify that Jerry Coleman is a liar. The
18 decision on who to believe is up to you.

19 Jerome Bass is now a 23-year-old young man. He is
20 accused of being a drug dealer when he was 18 and 19 years
21 old.

22 He will testify. He will tell you about what he
23 told Officer Gassaway and what he didn't tell Officer
24 Gassaway.

25 And I think there is the crux of the case. You

1 will have to decide who to believe.

2 THE COURT: At this time, ladies and gentlemen, we
3 are going to take a break. When we come back, then we'll
4 start evidence. We'll be in short recess.

5 (2:40 p.m. - Recess Taken)

6 (At 3:00 p.m. on September 19, 2005, with counsel
7 for the parties and the defendant present, the following
8 proceedings were had in the presence of the jury:)

9 THE COURT: Ms. Dugan-Hinrichs, you may call your
10 first witness.

11 MS. DUGAN-HINRICHs: Thank you, Your Honor, the
12 United States calls Officer Jeffrey Gassaway.

13 JEFFREY D. GASSAWAY, PLAINTIFF'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MS. DUGAN-HINRICHs:

16 Q. Could you please state your name and spell your last for
17 the record?

18 A. Jeffrey Gassaway. G-A-S-S-A-W-A-Y.

19 Q. By whom are you employed?

20 A. City of Omaha as a police officer.

21 Q. How long have you been with the Omaha Police Department?

22 A. Eight years.

23 Q. And are you assigned to a particular unit or division?

24 A. Yes. I'm currently assigned to the criminal

25 investigative bureau as a detective in the gang suppression

1 unit.

2 Q. How long have you been in that unit?

3 A. This is my second tour of duty with the gang unit.

4 Eighteen months the first time and almost three years this
5 time.

6 Q. So four and a half years?

7 A. Yes.

8 Q. Briefly, sir, could you describe your duties and
9 responsibilities as a member of the gang unit?

10 A. We are tasked with the identification and tracking and
11 conducting investigations of metro area gang members.

12 Q. And before you were assigned to the gang unit what part
13 of the police department did you work for?

14 A. I was assigned to uniform patrol and then to our traffic
15 bureau.

16 Q. And did you have any law enforcement experience prior to
17 the Omaha Police Department?

18 A. Yes. I was on active duty Air Force for twelve years,
19 eight of which I was a criminal investigator with the Air
20 Force Office of Special Investigations, OSI.

21 Q. With your work at the Omaha Police Department have you
22 received any honors or awards?

23 A. Yes, I have.

24 Q. And what are those?

25 A. I was Crimes Stoppers officer of the year in 2000 and

1 also in 2000 I won the LEEC, law enforcement coordinator
2 award, for top law enforcement officer of the year.

3 Q. And those were both in the year 2000?

4 A. 2004.

5 Q. Sir, I would like to talk to you specifically about your
6 job in the gang unit, if I could.

7 With regard to your duties and responsibilities,
8 could you describe them more in depth about how you conduct
9 your investigations?

10 A. Mostly we find ourselves conducting a lot of narcotics
11 investigations involving metro area gang members. We do it
12 in several different ways.

13 Once an allegation is received we do it
14 surreptitiously, meaning we use undercover officers if
15 possible, confidential informants, other investigative
16 techniques to prove up the allegation.

17 Or also we do long-term investigations, such as
18 conspiracy investigations, such as this one.

19 Q. And with regard to the gangs in north Omaha, could you
20 briefly state for us, during your tour of duty as a gang
21 unit member what were the major gangs in North Omaha,
22 Nebraska?

23 MR. LEVY: Objection, relevance.

24 THE COURT: Do you intend to tie this up with the
25 evidence in this particular case?

1 MS. DUGAN-HINRICHS: Yes, sir.

2 THE COURT: Overruled.

3 THE WITNESS: There's several major gangs, if you
4 go by population -- not population, but numbers in the gang.
5 37th Street, which we will talk about in this
6 trial, I'm sure.

7 And I should back up. You're probably more
8 familiar with Bloods and Crips.

9 Omaha is a little bit unique. A lot of the street
10 gangs go by neighborhoods, which can be a Blood set or a
11 Crip set.

12 So traditionally they go by 37th Street, 40th
13 Avenue, Crown Point, Murder Town Gangsters, 29th Street,
14 Small Street. There's several more.

15 Q. Jaynes Street?

16 A. Jaynes Street. 36th Avenue and 45th Avenue. Both are
17 Blood sets.

18 Q. Sir, are you familiar with the rivalries that exist
19 between the gangs that you have just talked about?

20 A. Yes. There are some gangs that traditionally do not get
21 along, or traditional rivals, as well as gangs that
22 traditionally do get along.

23 Q. Which of the gangs that you talked about would be the
24 traditional rivals of the 37th Street Gang?

25 A. Jaynes Street would be one. 40th Avenue would be an

1 ally type gang set with them.

2 Q. What about Crown Point?

3 A. Crown Point Crips would be a rival.

4 Q. And, sir, the term gang-banging, can you tell us what
5 that word means?

6 A. Essentially that's committing some sort of gang-related
7 violence, mostly in retaliation to an act that is committed
8 upon your gang set or a gang member in your set. It could
9 include fighting, assaults, shootings, et cetera.

10 Q. And could you in your own words describe or define for
11 us what conspiracy means to you?

12 A. Conspiracy is when two or more individuals enter into an
13 agreement to commit a criminal act and they do something in
14 furtherance of that agreement.

15 Q. And as it relates to your north Omaha investigations,
16 what typically has that crime been?

17 A. The distribution of crack cocaine.

18 Q. And is it specific to that drug?

19 A. No, not at all. It also includes marijuana, powder
20 cocaine.

21 Q. Could you define for us a dry conspiracy?

22 A. A dry conspiracy is a historical type investigation,
23 meaning there is no actual physical evidence, it's all
24 conspiracy driven and it relies upon statements of
25 co-conspirators or the other people that are involved in the

1 conspiracy at the time.

2 Q. So the cumulative, if you would, a group of interviews
3 conducted that talk about who dealt with who, would that be
4 fair?

5 A. Yes. We'll talk in depth I'm sure about proffer
6 interviews and that's where we solicit the information to
7 build our conspiracy case.

8 Q. And that is my next question. Define for me what a
9 proffer interview means to you.

10 A. A proffer interview is an interview conducted with an
11 individual that has been arrested, indicted in federal
12 court, and agrees to cooperate with the government.

13 We sit down with that individual at which time that
14 individual tells us in great detail about his or her entire
15 drug activity in the past, who they've dealt with, who they
16 have sold to, time frames, any other corroborating
17 information that we can gather.

18 So basically they outline their entire drug
19 activity which led up to their arrest and who participated
20 in it with them.

21 Q. And who is present at a proffer interview?

22 A. Initially, almost every proffer interview, the first
23 one, the United States Attorney assigned to the case, the
24 case officer, which would be myself or another gang unit
25 officer, or narcotics officer, the defendant, and his or her

1 attorney.

2 Q. And when you talked about the different types of
3 information that you glean from the individuals during a
4 proffer, would that also include locations that are
5 specific, for example, houses or neighborhoods?

6 A. Yes.

7 Q. Would that also include the cars or other personal
8 information about the people to help identify them?

9 A. Yes. We go into great detail to obtain corroborating
10 information so we can accurately identify someone, location,
11 or figure out if that person is telling the truth about a
12 person that we already may have knowledge of.

13 Q. And how do you go about corroborating that information?

14 A. It's corroborated by personal knowledge. All the gang
15 unit officers in our unit have significant experience in the
16 north Omaha area.

17 So we ask them. We run the proffers by each
18 officer to ensure that they may have something to add.

19 We do data checks. We do DMV checks. We do checks
20 on an individual's residence.

21 We run phone numbers. We do a query of our FI
22 system.

23 Every time an individual is contacted by the
24 police, was there an identification card made, and if that
25 person was identified with another person. That way we can

1 show a link that they actually did hang out together.

2 Q. What information would you get from a data check?

3 A. It tells us the time frame a person was incarcerated.

4 It would tell us the person's criminal history.

5 We can go in and look at reports and pull those
6 reports to see who else was involved in a specific incident.

7 Q. For example, if you did a proffer of an individual who
8 said he dealt crack cocaine in 2002 and you went and did a
9 data check and found out they were incarcerated in that time
10 frame and couldn't have possibly been out on the street
11 dealing cocaine, that would be a form of corroboration that
12 that person was being untruthful?

13 MR. LEVY: Objection to the leading basis of the
14 question.

15 THE COURT: I think because it's preliminary in
16 nature I'm going to overrule the objection. You may
17 proceed.

18 THE WITNESS: Yes. It's proof that maybe they had
19 the dates wrong.

20 It's quite possible that someone had the wrong
21 month or year, or they were not telling the truth, yes.

22 BY MS. DUGAN-HINRICHS:

23 Q. Do you also conduct surveillance on these houses or
24 locations that you are given to corroborate information?

25 A. Yes, we do.

1 Q. Why do you do that?

2 A. Basically to see what activity is going on there. If we
3 receive an allegation that someone is selling drugs out of a
4 specific location, the best way to go and find out is to go
5 and set up on that place to see if there is any short-term
6 pedestrian traffic which is indicative of drug sales going
7 on inside the residence.

8 Q. As an Omaha police officer, what concerns do you have
9 when you set up surveillance at a north Omaha location to
10 try to look for this information?

11 A. Well, a lot of our officers, including myself, are well
12 known, and so are our vehicles, so sometimes it very
13 difficult to do that.

14 Q. Because they would know that you are watching, correct?

15 A. Correct.

16 Q. Sir, what is a traditional investigative technique that
17 you have utilized in your job that doesn't apply to the gang
18 unit, so the jury can understand what is available to you?

19 A. Well, I'm not sure if I understand the question.

20 Q. I can rephrase it. Are there traditional investigative
21 techniques that you do not use, given the type of
22 investigations you do in north Omaha?

23 A. Yes.

24 Q. And what are those investigative techniques?

25 A. Some of them are controlled buys, for instance, or

1 undercover buys.

2 I worked in an undercover capacity in the past, but
3 in this sort of investigation, or against north Omaha gang
4 members, I can't work undercover because they simply know
5 me.

6 Controlled buys we may not be able to do by using a
7 confidential informant because you have to have access to
8 that group in some way, shape or form.

9 Wiretaps are available, but most of the time aren't
10 feasible to use as depicted on TV. You just can't go out
11 and get a wiretap.

12 Q. Are wiretaps successful on cellular phones, or do you
13 know?

14 A. Yes, they are.

15 Q. How about trash pulls?

16 A. We do trash pulls, yes.

17 Q. What does that entail?

18 A. We wait until trash day, take their trash, go through it
19 to find any contraband, drugs, and venue items as to who may
20 live inside that residence and that will give us probable
21 cause to get a search warrant signed by a magistrate or
22 judge.

23 Q. Sir, after you obtain information through proffers, and
24 you have the opportunity to verify or corroborate as much of
25 the information as you can, then what do you do with that

1 information?

2 A. We sit down with the United States Attorney's Office to
3 see if that's enough information to seek an indictment.

4 Q. And who decides if there is enough information to seek
5 an indictment?

6 A. The United States Attorney's Office.

7 Q. And are you a member, sir, of a task force?

8 A. Yes.

9 Q. What is the name of that task force?

10 A. The Metro Area Task Force.

11 Q. Who are its members?

12 A. We have several law enforcement agencies, including
13 federal and state.

14 We have the FBI, Drug Enforcement Administration,
15 ICE, which was formerly INS.

16 We have Omaha police, Sarpy, Douglas County,
17 LaVista, Ralston, are all members.

18 Q. The whole metro area?

19 A. Yes, they all have representatives on the task force.

20 Q. What is the purpose of that task force?

21 A. To conduct narcotics investigations.

22 Q. Sir, are you familiar with Operation Alcatraz?

23 A. Yes.

24 Q. Explain to us what that is.

25 A. It's a federally-funded case that myself and another

1 officer initiated in late 2003 after we saw a trend of crack
2 cocaine distribution among gang members in the Omaha area.

3 We saw parallels that indicated that rival gang
4 members were selling crack cocaine to rival gangs, as well
5 as allied gangs.

6 And we sought federal funds to target the
7 distribution networks from the highest level to the street
8 level.

9 Q. And when you obtain a proffer, does that include who
10 that individual gets their source of crack cocaine from?

11 A. Yes.

12 Q. And would you also ask them who they distribute it to?

13 A. Yes.

14 Q. And so through the series of proffers is it fair to say
15 that you are developing a hierarchy?

16 A. Yes.

17 Q. Is that part of this information that you were learning
18 through this Operation Alcatraz?

19 A. Yes.

20 Q. Sir, do you know the number of federal indictments that
21 arose from Operation Alcatraz?

22 A. I would say in the 18 month time period in the
23 neighborhood of 135 to 150.

24 Q. Those are individuals, correct?

25 A. Yes.

1 Q. And with regard to these gangs that you listed earlier,
2 would those 135 to 150 people be members of all of those
3 gangs?

4 A. Not all, but a good deal, yes.

5 Q. Are there people that you indicted that aren't members
6 of a gang?

7 A. Yes.

8 Q. Can you define for me what the term plug means?

9 A. The term plug, which you will hear, is someone that is a
10 source for someone to obtain drugs. Their supplier, if you
11 will.

12 Q. And the term swerve?

13 A. Swerve is an individual who has a severe crack cocaine
14 habit and they buy small amounts on the street as a crack
15 addict.

16 Q. Is this case one of those that arose out of Operation
17 Alcatraz?

18 A. Yes.

19 Q. And are you familiar with an individual named Lamar
20 Bass?

21 A. Yes.

22 Q. Is Lamar Bass the older brother of the defendant Jerome
23 Bass?

24 A. Yes.

25 Q. And did this case historically derive itself out of

1 Lamar's case?

2 A. Partly, yes.

3 Q. Could you explain how that worked?

4 A. Lamar is a member of the 37th Street Crips--

5 MR. LEVY: Judge, I object and move to strike on
6 foundational grounds.

7 THE COURT: Sustained.

8 BY MS. DUGAN-HINRICHS:

9 Q. Sir, did you have the occasion to indict an individual
10 by the name of Lamar Bass?

11 A. Yes.

12 Q. And upon whose proffer information was that indictment
13 partially based?

14 MR. LEVY: Objection, hearsay; relevance.

15 THE COURT: I'll sustain that.

16 BY MS. DUGAN-HINRICHS:

17 Q. In addition to proffer information which was used as
18 part of the basis of Lamar Bass's case, did you utilize
19 investigative techniques in the Lamar Bass investigation?

20 A. Yes.

21 Q. Did you combine the proffer and that investigative
22 technique to form that basis?

23 A. Yes.

24 Q. And was it presented to the United States Attorney?

25 A. Yes.

1 Q. And was it indicted?

2 A. Yes, it was.

3 Q. Do you recall when?

4 A. December of 2002 and he was arrested on New Years Eve of
5 that year.

6 Q. Was Lamar Bass indicted individually or did he have a
7 co-defendant?

8 A. He had a co-conspirator.

9 Q. Who was that?

10 A. JeVaughn Erwin.

11 Q. Do you recall when JeVaughn Erwin was arrested on his
12 federal indictment?

13 A. He was indicted the same time in 2002 and we did not
14 locate him for about a year possibly.

15 Q. Sir, through your investigations as an officer and the
16 conducting of proffer interviews, are you familiar with the
17 relationship and the hierarchy of the 37th Street Gang?

18 A. Yes.

19 Q. Are there family relationships within this gang?

20 MR. LEVY: Objection, Your Honor, foundation,
21 relevance.

22 THE COURT: Sustained.

23 BY MS. DUGAN-HINRICHS:

24 Q. You said Lamar Bass was a 37th Street Gang member?

25 MR. LEVY: Objection, foundation.

1 THE COURT: Sustained.

2 BY MS. DUGAN-HINRICHS:

3 Q. Through your investigative techniques and years of
4 experience in the gang unit, sir, do you know Lamar Bass to
5 be a documented 37th Street Gang member?

6 MR. LEVY: Same objection, Your Honor.

7 THE COURT: Sustained.

8 BY MS. DUGAN-HINRICHS:

9 Q. I believe you testified that Lamar Bass was Jerome
10 Bass's older brother?

11 A. Yes.

12 Q. Are you familiar with the relationship between Lamar
13 Bass and JeVaughn Erwin?

14 A. Yes.

15 Q. How are you familiar with that?

16 A. Based on our investigation into the 37th Street set, we
17 came to find out JeVaughn Erwin and Lamar Bass --

18 MR. LEVY: Judge, I object to anything further than
19 yes, he's familiar, and he was asked then how is he
20 familiar; not what he found out.

21 THE COURT: I'll sustain the objection. The
22 information that you've received up to this point is
23 admissible and counsel just needs to ask the next question.
24 You may proceed.

25 BY MS. DUGAN-HINRICHS:

1 Q. Sir, how are you familiar with this information?

2 A. We knew that JeVaughn Erwin and Lamar Bass were involved
3 in selling crack cocaine --

4 MR. LEVY: Objection, move to strike, not
5 responsive; foundation; relevance.

6 THE COURT: Sustained.

7 BY MS. DUGAN-HINRICHS:

8 Q. Let me back up. You had the occasion to conduct a
9 proffer interview of an individual named Jimmy Swain,
10 correct?

11 A. I did not conduct that proffer, but I'm familiar with
12 it, yes.

13 Q. And was that one of the proffers used to indict Lamar
14 Bass?

15 MR. LEVY: Objection, Your Honor, calls for
16 hearsay. Relevance.

17 THE COURT: Sustained.

18 BY MS. DUGAN-HINRICHS:

19 Q. Did you have the occasion to conduct an interview of an
20 individual name Karlos Harper?

21 A. Yes.

22 Q. And did Karlos Harper describe for you the family
23 relationships that existed within the 37th Street Gang?

24 A. Yes.

25 Q. And was Karlos Harper involved in the crack cocaine

1 conspiracy with other 37th Street members?

2 MR. LEVY: Objection, foundation, relevance,
3 materiality.

4 THE COURT: I'm going to sustain that objection. I
5 believe Mr. Harper is on the witness list. So I think that
6 is hearsay.

7 BY MS. DUGAN-HINRICHS:

8 Q. Sir, are you familiar with who the 37th Street Gang was
9 buying and selling crack cocaine with?

10 A. Yes.

11 Q. How did you learn that information?

12 A. Through our investigation.

13 Q. And who do you know them to sell and buy crack cocaine
14 from?

15 MR. LEVY: That's objected to as calling for
16 hearsay.

17 THE COURT: Sustained.

18 BY MS. DUGAN-HINRICHS:

19 Q. Sir, are you familiar with or were you the case agent
20 for Lamar Bass?

21 A. Yes, I was.

22 Q. What about JeVaughn Erwin?

23 A. Yes.

24 Q. Jerome Daniels?

25 A. Yes.

1 Q. Jimmy Jackson?

2 A. Yes.

3 Q. Terrell Jackson?

4 A. Yes.

5 Q. Karlos Harper?

6 A. Yes.

7 Q. Jacara Baker?

8 A. Yes.

9 Q. Deandre Baker?

10 A. Yes.

11 Q. Antone Green?

12 A. Yes.

13 Q. Jerry Coleman?

14 A. No, I was not.

15 Q. Are you familiar with Jerry Coleman?

16 A. Yes. I participated in the proffer, but I was not the
17 case agent.

18 Q. How about Royce Brown?

19 A. Yes.

20 Q. Marshall Box?

21 A. Again, participated in the proffer, but not the case
22 agent.

23 Q. William Hawkins?

24 A. No, I'm familiar with the proffer.

25 Q. And were those individuals that I named indicted on

1 federal conspiracy charges?

2 MR. LEVY: Objection, relevance.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, they were.

5 BY MS. DUGAN-HINRICHS:

6 Q. And were they involved with the conspiracy together?

7 MR. LEVY: Objection, foundation, hearsay.

8 THE COURT: Sustained.

9 BY MS. DUGAN-HINRICHS:

10 Q. Are you aware, sir, of who the co-conspirators are?

11 MR. LEVY: Objection, hearsay.

12 THE COURT: Sustained.

13 BY MS. DUGAN-HINRICHS:

14 Q. As it specifically relates to this case, sir, before
15 Jerome Bass was indicted, did you know who the main source
16 or supply of crack cocaine was for the 37th Street Gang?

17 A. Yes.

18 Q. How did you know that?

19 A. From information we got from several sources, including
20 the main source himself.

21 Q. Who was the main source?

22 MR. LEVY: Objection, hearsay.

23 THE COURT: Sustained.

24 BY MS. DUGAN-HINRICHS:

25 Q. Specific to the defendant, Jerome Bass, did people

1 through proffer interviews provide information on him and
2 his crack dealing activities prior to his indictment?

3 MR. LEVY: Objection, hearsay.

4 THE COURT: Sustained.

5 BY MS. DUGAN-HINRICHS:

6 Q. Did you know Mr. Jerome Bass before he was indicted?

7 A. Yes.

8 Q. How did you know him?

9 A. We received information through proffers in which we
10 were able to identify him positively and --

11 MR. LEVY: Move to strike as hearsay, Your Honor.

12 THE COURT: Sustained.

13 MR. LEVY: Ask the jury to disregard everything
14 they have heard.

15 THE COURT: Well, for this answer, so the objection
16 is sustained and the jury is instructed to disregard his
17 answer.

18 BY MS. DUGAN-HINRICHS:

19 Q. Sir, do you know what date Jerome Bass was indicted?

20 A. He was indicted I believe August or September of 2004
21 and arrested on October 13, 2004.

22 Q. Were you involved with that arrest?

23 A. Yes.

24 Q. How did that come about?

25 A. I had observed Mr. Bass driving on Sorensen Parkway. I

1 radioed to a marked cruiser to stop him because I knew he
2 had an active felony warrant for his arrest.

3 Q. And did you observe that cruiser conduct that traffic
4 stop?

5 A. I was in my personal vehicle going to work and I didn't
6 go to the immediate stop location.

7 I waited until they radioed to me where they
8 stopped him and I stayed a few blocks off.

9 Q. And so you were in radio contact with them?

10 A. Yes.

11 Q. And at some point did you meet up with that cruiser and
12 Jerome Bass?

13 A. Yes, I instructed them to take him to the 30th and
14 Taylor Street precinct where I would meet them there and
15 conduct an interview with him.

16 Q. He was under arrest, correct?

17 A. Yes.

18 Q. And did you have contact with him at the northeast
19 precinct?

20 A. Yes, I did.

21 Q. How did that come about?

22 A. They had put him inside of an interview room where he
23 waited for me and I went in and conducted an interview with
24 him at that location.

25 Q. How did that interview begin?

1 A. It began by I introduced myself to him and told him that
2 he had an active felony warrant for his arrest for
3 conspiracy to distribute crack cocaine and I was there to
4 conduct an interview with him.

5 MS. DUGAN-HINRICHS: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 BY MS. DUGAN-HINRICHS:

9 Q. Sir, after you told him what he was arrested for, how
10 did you conduct your interview?

11 A. I told him I would like to ask him some questions, but
12 before I did so I would have to read him his Miranda rights.

13 Q. Did you use anything to assist you?

14 A. Yes, I did.

15 Q. What did you use?

16 A. I used OPD Form 17, the Omaha police rights advisory
17 form.

18 Q. Directing your attention to Exhibit 14, would you tell
19 me what that is?

20 A. Again, the Omaha Police Department rights advisory form,
21 it's dated October 13, 2004. It bears RB number 52781E,
22 which is our records bureau number assigned to this case.

23 Q. Do you recognize any handwriting on Exhibit 14?

24 A. Yes.

25 Q. Whose is it?

1 A. Mine.

2 Q. Anyone else's?

3 A. Mr. Bass's.

4 Q. Sir, when you utilized Exhibit 14 to assist you, what
5 was the first thing you advised Mr. Bass of on October 13,
6 2004?

7 A. The first question is, I advised him that I was a police
8 officer and then I read verbatim off the rights advisory
9 form and I asked Mr. Bass for yes or no only answers.

10 Q. And then you recorded those answers on Exhibit 14?

11 A. Yes, I did.

12 Q. Sir, what was the first right that you advised Mr. Bass
13 of?

14 A. I told him I would like to advise him that I'm a police
15 officer and the next portion of that question is do you
16 understand that?

17 Q. And what was his response?

18 A. Yes.

19 Q. Did you record it?

20 A. Yes, I did.

21 Q. What was the second right you advised him of?

22 A. You have the right to remain silent and not make any
23 statements or answer any of my questions. Do you understand
24 that?

25 Q. What was his response?

1 A. Yes.

2 Q. Did you record that on Exhibit 14?

3 A. Yes, I did.

4 Q. What was the third thing you told Mr. Bass?

5 A. Anything that you may say can and will be used against
6 you in court. Do you understand that?

7 Q. What was his response?

8 A. Yes.

9 Q. And did you record that on Exhibit 14?

10 A. Yes, I did.

11 Q. What was the fourth right you advised him of?

12 A. You have a right to consult with a lawyer and have a
13 lawyer with you during questioning. Do you understand that?

14 Q. And what was his response?

15 A. Yes.

16 Q. And is that recorded on Exhibit 14?

17 A. Yes.

18 Q. What was the fifth right you advised him of?

19 A. If you cannot afford a lawyer, the court will appoint
20 one to represent you. Do you understand that?

21 Q. What was his response?

22 A. Yes.

23 Q. Did you record that on Exhibit 14?

24 A. Yes.

25 Q. And what was the last thing you told him?

1 A. Knowing your rights in this matter, are you willing to
2 talk to me now?

3 Q. What did he respond?

4 A. Yes.

5 Q. Is that on Exhibit 14?

6 A. Yes, it is.

7 Q. Is Exhibit 14, sir, a true and accurate copy of the
8 original as you recall it on October 13, 2004?

9 A. Yes.

10 Q. And is it in the same or substantially the same
11 condition as it was on that day?

12 A. Yes.

13 MS. DUGAN-HINRICHS: Government offers Exhibit 14.

14 MR. LEVY: May I examine it?

15 THE COURT: Yes, you may.

16 MR. LEVY: No objection.

17 THE COURT: Exhibit 14 is received.

18 MS. DUGAN-HINRICHS: May I have permission to
19 publish it?

20 THE COURT: Yes, you may.

21 BY MS. DUGAN-HINRICHS:

22 Q. At the bottom of Exhibit 14 there is a signature. Do
23 you recognize that signature?

24 A. Yes, I do.

25 Q. Whose is it?

1 A. Jerome Bass's.

2 Q. And how do you know that?

3 A. I asked him to affix his signature at the bottom of the
4 form to show further voluntary cooperation in the interview.

5 Q. Why did you do that?

6 A. It's not mandatory that we do that. As a common
7 practice I always do that so I can show that the person, I
8 recorded their responses and the person signed the form on
9 their own accord, without any pressure from me.

10 Q. Do you do that in all cases?

11 A. I do personally, yes.

12 Q. After he was advised of his Miranda rights by Exhibit
13 14, did he make a statement to you?

14 A. Yes, he did.

15 Q. Can you describe for me his physical appearance during
16 the course of your interview with him?

17 A. He was coherent, alert, didn't seem to be under the
18 influence of alcohol or drugs.

19 It was 3:00 o'clock in the afternoon. He was
20 awake. He seemed a bit nervous.

21 Q. Sir, at any time was he confused by any of the questions
22 that you asked?

23 A. No.

24 Q. Were the responses that he gave you appropriate for the
25 questions that you asked?

1 A. Some.

2 Q. Did he complain about anything?

3 A. No.

4 Q. At any time during your interview did he refuse to
5 answer any of your questions?

6 A. No, he did not.

7 Q. Did he invoke his right to remain silent?

8 A. No, he did not.

9 Q. Did he ask for an attorney?

10 A. No, he did not.

11 Q. Did you promise him anything during the course of that
12 interview?

13 A. No, I did not.

14 Q. Did you offer him any inducements, like talking to the
15 prosecutor on his behalf?

16 A. No.

17 Q. Did you threaten him or use physical force in any way?

18 A. No.

19 Q. How long did your interview last on October 13, 2004?

20 A. The interview started at 1525 hours, 3:25 p.m., and we
21 concluded at 4:50 p.m.

22 Q. Can you describe for me what the defendant said to you
23 during that interview?

24 A. I started -- the interview was encompassed by four
25 pages, so there was quite a lot of dialogue, but I started

1 the interview --

2 MR. LEVY: Judge, I believe the officer is reading
3 from his report and I would object to him doing that, unless
4 he wants to refer to it to refresh his recollection.

5 THE COURT: I'm not sure I understand the
6 objection. It appears he's reading from his report.

7 MR. LEVY: I think he's reading from his report. I
8 object to him reading from his report of the statement,
9 unless he must refresh his recollection from the report.

10 THE COURT: I'll sustain the objection.
11 Ms. Dugan-Hinrichs, if you would just ask the witness the
12 question.

13 And if he needs to refer to his report, then he
14 needs to advise us that he's doing that.

15 MS. DUGAN-HINRICHs: Certainly, sir. I can break
16 it down.

17 BY MS. DUGAN-HINRICHs:

18 Q. Sir, after you read him his Miranda rights, what was the
19 first thing that you and Jerome Bass talked about during
20 that interview?

21 A. I told him he was indicted for crack cocaine
22 distribution and that I suspected that he was involved with
23 selling crack cocaine and I asked him, can you tell me about
24 that?

25 Q. And what was his response to that question?

1 A. Initially he denied any involvement.

2 Q. And after he denied any involvement, what questions did
3 you ask after that?

4 A. I told him that we had several statements of
5 co-conspirators that indicated him involved in distributing
6 crack cocaine.

7 He then said that he believed that he transported
8 some narcotics, namely marijuana and crack cocaine, to
9 several individuals on behalf of his brother.

10 In other words, his brother Lamar Bass asked him to
11 make deliveries for him.

12 Q. And did Mr. Jerome Bass recall any specific instances in
13 which he made these deliveries on behalf of his brother
14 Lamar?

15 A. Yes.

16 Q. Can you recall the first specific instance that Mr. Bass
17 described to you?

18 A. Yes.

19 Q. What did he tell you?

20 A. He said during 2002 Lamar Bass asked him to deliver some
21 drugs to an individual by the name of Mario Moss.

22 Mr. Jerome Bass said that he delivered marijuana on
23 that occasion to Mario Moss and he said that it was hidden
24 inside of an article of clothing.

25 MR. LEVY: Excuse me, Your Honor. I think it would

1 be appropriate at this time to instruct the jury on 404(b).

2 THE COURT: We don't have an instruction, of
3 course, correct, that we've agreed on?

4 MR. LEVY: Judge, it's the Eighth Circuit --

5 THE COURT: We have not agreed on what the
6 instruction is going to be specifically.

7 I think without getting into any particulars I will
8 defer giving the instruction until we have completed at
9 least the direct examination of this witness. Is that
10 acceptable?

11 MR. LEVY: That's fine.

12 THE COURT: You may proceed, Ms. Dugan-Hinrichs.

13 MS. DUGAN-HINRICHs: Thank you, Judge.

14 BY MS. DUGAN-HINRICHs:

15 Q. Sir, when Jerome Bass stated that he had delivered
16 marijuana in an article of clothing to Mario Moss, did he
17 say what if anything he got in return for doing that?

18 A. Yes. He said that Lamar, I think, gave him gas money
19 for making the trip.

20 Q. After describing that specific instance, did he describe
21 any other instances in which he delivered controlled
22 substances for his brother?

23 A. Yes.

24 Q. And what did he tell you?

25 A. He said on another specific trip that an individual

1 called Lamar and asked for something.

2 And Lamar sent Jerome to meet an individual who he
3 identified as Sacks, street name Sacks, at BJ's convenience
4 store at 42nd and Ames.

5 He said again the narcotics that he believed was
6 hidden inside of an article of clothing was crack cocaine.

7 I asked him how did he know that it was crack
8 cocaine inside of the jacket.

9 He said that this individual Sacks has a reputation
10 on the street to be a big time buyer and seller of crack
11 cocaine.

12 Q. Sir, have you been able to identify who Sacks is?

13 A. No.

14 Q. After that second instance where he described delivering
15 controlled substances for his brother, specifically crack,
16 did he say anything specifically about other deliveries
17 similar in nature?

18 A. Yes. I asked him, of course the next follow-up question
19 was, who else did you deliver crack cocaine to, or you
20 thought you were delivering crack cocaine to.

21 Jerome Bass responded by saying, "Millions of
22 people."

23 And I said, "Millions of people, that has to be an
24 exaggeration."

25 And he responded, "Yeah, not millions," but

1 something to the effect of a lot, and I can refer to my
2 report for the exact terminology.

3 Q. Would referring to your report refresh your
4 recollection?

5 A. Yes.

6 Q. I would ask that you do that for us, please.

7 A. The exact words were, "A bunch of times."

8 Q. Did Mr. Jerome Bass indicate if he had delivered crack
9 cocaine for Lamar to the same people more than one time?

10 A. Yes.

11 Q. What did he say about that?

12 A. He said that he, along with the same bunch of times
13 statement that he made, he said he even delivered to the
14 same people multiple times.

15 Q. Repeat customers?

16 A. Repeat customers, yes.

17 Q. Did Mr. Jerome Bass tell you who these people were that
18 he made crack cocaine deliveries to for his brother?

19 A. Yes, he named a few people.

20 Q. Who did he tell you?

21 A. William Hawkins, Karlos Harper, Terrell Jackson,
22 JeVaughn Erwin.

23 Q. Did he indicate that he knew the names of all of the
24 people he made deliveries to?

25 A. He said he did not know all the names, but he could

1 recall faces if pictures were shown.

2 Q. You had the occasion to conduct the proffer interviews
3 of Lamar Bass, correct?

4 A. Yes.

5 Q. And after the defendant made the statement regarding who
6 he made deliveries to, did you find that significant?

7 A. Yes, I did.

8 Q. Why was that significant?

9 MR. LEVY: Objection, Your Honor, relevance, what
10 is significant to him.

11 THE COURT: Sustained.

12 BY MS. DUGAN-HINRICHS:

13 Q. Did the defendant's confession provide you with
14 corroboration in other ongoing police investigations?

15 MR. LEVY: Objection, form of the question.

16 THE COURT: Sustained.

17 BY MS. DUGAN-HINRICHS:

18 Q. The people that we have talked about, that you've named,
19 William Hawkins, Karlos Harper, JeVaughn Erwin, and Terrell
20 Jackson, at the time that Mr. Jerome Bass gave his statement
21 were those people indicted?

22 A. Yes.

23 Q. Were all of these people, including Lamar and Jerome,
24 part of a larger conspiracy?

25 MR. LEVY: Objection, Your Honor, foundation,

1 relevance.

2 THE COURT: Sustained.

3 BY MS. DUGAN-HINRICHS:

4 Q. Sir, after Jerome indicated who he delivered crack to,
5 did he tell you how the transactions would come about and
6 the articles of clothing?

7 A. Yes.

8 Q. What did he explain to you about that?

9 A. He told me typically an individual would call Lamar and
10 use code words.

11 For instance he said they would call and say, "Hey,
12 do you have my suit ready?"

13 Meaning, I know through experience that --

14 MR. LEVY: I must object on hearsay grounds, move
15 to strike.

16 This is a conversation between an individual and
17 Lamar. I think he testified it was with Lamar. Foundation
18 on it as well.

19 THE COURT: I think this is a conversation between
20 the defendant and the officer concerning code words, that's
21 my recollection, and I'm going to overrule the objection.

22 MR. LEVY: If that's what it is I'm not going to
23 object.

24 THE COURT: The objection is overruled.

25 THE WITNESS: He told me that they would use code

1 words over the cell phone and the type of code words that
2 they would use would be an article of clothing.

3 For instance, a suit would be referred to as a full
4 ounce of crack cocaine.

5 Something other than that would be a smaller
6 quantity, such as pants could be a quarter, or socks could
7 be an eight-ball, 3.5 grams.

8 And the crack would be wrapped in the article of
9 clothing and Jerome Bass would take that to the individual
10 that called for the drugs.

11 BY MS. DUGAN-HINRICHS:

12 Q. And after he explained to you their use of code words on
13 the phone, what was the next part of your interview, if you
14 recall?

15 A. If I could look at my report? Are you asking what the
16 next question was?

17 Q. Yes. Would that refresh your recollection, Officer?

18 A. Yes.

19 Q. Take a moment and review that.

20 A. Yes.

21 Q. After your conversation that concerned the code words
22 that Jerome would use, what was the next thing that you and
23 Jerome Bass talked about?

24 A. We talked about why he was making these deliveries for
25 his brother.

1 Q. What did he tell you?

2 A. He said that he loved his big brother and that he felt
3 obligated to him because growing up Lamar would help him
4 with his homework, would give him things, and so he felt
5 obligated to help his big brother out.

6 Q. After he explained the reasons behind his actions, then
7 what was the next thing that you and the defendant talked
8 about during this interview?

9 A. I asked him when was the last time that he purchased
10 illegal drugs.

11 Q. What did he tell you?

12 A. He said that he had purchased marijuana just a couple
13 days earlier, maybe a week or so prior on two separate
14 occasions.

15 Q. Did he tell you anything else about that?

16 A. I asked him then about crack, when was the last time he
17 was involved in crack, and he said that he had not been
18 involved with crack cocaine since his brother went to jail.

19 Q. I believe you testified that Lamar was arrested when?

20 A. December 31, 2002.

21 Q. After he made that comment, did you clarify that
22 specific point with him?

23 A. Yes.

24 Q. Why did you do that?

25 A. Just so we were clear, so I was clear for the police

1 report what exactly he meant by that.

2 Q. After you clarified that particular point, then what did
3 you ask the defendant?

4 A. I asked him what clean meant and he said that he was not
5 involved with the use of crack cocaine.

6 Later he changed that to, I think he just changed
7 it to involved with crack cocaine instead of the term use.

8 After that we talked a little bit more about what
9 use meant as far as his involvement.

10 He said he did not use crack cocaine. It was just
11 that he was clean, meaning he did not do any more deliveries
12 or distribution.

13 Q. After clarifying that point of when the defendant said
14 he stopped dealing crack cocaine, then what was the next
15 thing that you and he talked about?

16 A. I asked him, because of the vague nature of him saying
17 that he knew almost positive that it was crack cocaine in
18 the deliveries, but he wasn't sure, I asked him did he know
19 in fact that he was delivering crack cocaine and he
20 responded by saying it was a possibility.

21 Q. Did he explain if he still had ongoing relationships
22 with William Hawkins, Karlos Harper, and JeVaughn Erwin?

23 A. He said at that time he had stopped hanging out with
24 those guys.

25 Q. What was the next thing that you and Jerome talked about

1 in this interview?

2 A. If I can refer to my police report for accuracy?

3 Q. Sure. Would that refresh your recollection?

4 A. Yes. We then talked about -- in the course of my
5 investigation I knew of a location that Lamar Bass and
6 others were selling crack cocaine from.

7 MR. LEVY: Objection, based on hearsay, unless it's
8 offered not for the truth of the matter asserted.

9 THE COURT: The officer is asking for a location
10 that he believes somebody is doing drugs and it's not for
11 the truth that it's being done there, it's just based on his
12 belief. So I'll sustain the objection and overrule it in
13 part.

14 So, ladies and gentlemen, what has just happened is
15 the officer says he believes he thinks there is a site for
16 some drugs being transacted.

17 And he's now inquiring of the defendant about that
18 site and we can certainly explore that. So you may proceed,
19 Ms. Dugan-Hinrichs

20 BY MS. DUGAN-HINRICHs:

21 Q. Sir, did you have a specific address that you asked the
22 defendant if he knew if crack was being distributed from
23 that location?

24 A. Yes. There were two.

25 Q. Do you recall the address of the first place?

1 A. Yes. It's on the corner of 37th and Spaulding, 3902
2 North 37th Street.

3 And then there was a second house in the area 38th
4 and Grand. The homeowner's name was Duke.

5 And I asked him was he present at any time at those
6 locations and either being involved with selling crack or
7 observed the selling of crack taking place inside those
8 locations.

9 MS. DUGAN-HINRICHS: Your Honor, may I approach the
10 witness?

11 BY MS. DUGAN-HINRICHS:

12 Q. Directing your attention to Exhibit 12, can you tell us
13 what that is?

14 A. A residence located at 3902 North 37th Street; 37th and
15 Spaulding.

16 Q. Is that the location you were inquiring of Jerome Bass?

17 A. Yes.

18 Q. And have you been by that residence, sir?

19 A. Yes, I have.

20 Q. Were you by the residence in the time frame in which
21 this interview was conducted?

22 A. Yes.

23 Q. Does Exhibit 12 fairly and accurately represent a
24 photograph of 3902 North 37th?

25 A. Yes, it does.

1 MS. DUGAN-HINRICHS: The government offers Exhibit
2 12.

3 MR. LEVY: I have no objection.

4 THE COURT: Exhibit 12 is what address?

5 THE WITNESS: 3902 North 37th Street.

6 THE COURT: Exhibit 12 is received.

7 MS. DUGAN-HINRICHS: May I have permission to
8 publish it, sir?

9 THE COURT: Yes, you may.

10 BY MS. DUGAN-HINRICHS:

11 Q. Sir, with regard to 3902 North 37th Street, I believe
12 you began to testify you talked to the defendant about this
13 house, correct?

14 A. Yes.

15 Q. And could you describe for me what that conversation was
16 about?

17 A. I asked him again if he had been at that location and
18 either involved in selling crack cocaine from there or
19 observing others selling crack cocaine from there.

20 Q. What did he tell you?

21 A. He said that he was not involved in the sale of crack
22 cocaine there.

23 However, he was present and observed the short-term
24 traffic coming and going and other members inside that
25 residence passing items back and forth to people that came

1 to the residence.

2 Q. And I believe you testified that there were two houses
3 that you were asking the defendant about, correct?

4 A. Yes.

5 Q. Do you recall the address of the second house?

6 A. I do not recall it, but it's known to us as a house that
7 was involved in the sale of crack and it's in the area of --

8 MR. LEVY: Move to strike based on hearsay and
9 foundation.

10 THE COURT: Sustained.

11 BY MS. DUGAN-HINRICHS:

12 Q. Did you have the occasion to ask Mr. Bass about another
13 location?

14 A. Yes.

15 Q. What did he tell you about the second house, on 39th and
16 Grand Street?

17 A. 38th and Grand, in that area, he said pretty much the
18 same thing as the 3902 Spaulding Street address.

19 Q. That he had been present at that house?

20 A. Yes.

21 Q. And that he observed people coming and going, is that
22 fair?

23 A. Yes.

24 Q. Was there anything else that you and Jerome Bass talked
25 about on your October 13th, 2004, interview?

1 A. No, that was it.

2 Q. What did you do at the conclusion of that interview?

3 A. I transported -- prior to transporting Mr. Bass to our
4 central station booking facility, I told him that this was
5 the end of the interview.

6 I told him that I would compile what we talked
7 about in our interview into a police report and I would
8 bring it to detention the next day so he could review it for
9 accuracy.

10 Q. Did you in fact do that?

11 A. Yes, I did.

12 Q. So the next time you saw Jerome Bass was on October
13 14th, 2004, correct?

14 A. Correct.

15 Q. And where did you see him?

16 A. At the booking facility at Omaha police central station
17 in the basement.

18 Q. And, sir, why did you want to go back and let him review
19 that report?

20 A. For a couple of reasons. Fairness to him. The first
21 reason would be in fairness to him.

22 In our interview we talked about a lot of things
23 and I compiled it in a police report.

24 I wanted him to have a chance to review it and make
25 any changes if he saw fit.

1 The second reason was for why we are here today. I
2 just wanted to make sure that I was covered and didn't
3 appear to put words into his mouth or write something in the
4 statement that wasn't what he said.

5 MS. DUGAN-HINRICHS: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 BY MS. DUGAN-HINRICHS:

9 Q. When you met with the defendant on October 14, 2004, how
10 did that interview begin?

11 A. The same as the first. I read him his Miranda rights
12 verbatim via OPD form 17, rights advisory form.

13 Q. I have handed you Exhibit 15. Do you recognize it?

14 A. Yes.

15 Q. And what is it?

16 A. It's Omaha police rights advisory form bearing the same
17 RB number, 52781E, but this one is dated October 14, 2004.

18 Q. And do you recognize the handwriting on that document?

19 A. Yes, mine and Mr. Bass's handwriting.

20 Q. And that's the same form as Exhibit 14 that you've
21 previously described, correct?

22 A. Correct.

23 Q. And, sir, when you re-Mirandized him that next day, did
24 you read each right verbatim as you have just described?

25 A. Yes.

1 Q. Did you record each and every response on Exhibit 15?

2 A. Yes, each response was yes and I recorded it as such.

3 Q. Is Exhibit 15 a fair and accurate copy of the original
4 from October 14, 2004?

5 A. Yes.

6 Q. Is it in the same or substantially the same condition as
7 it was that day?

8 A. Yes, it was. Yes, it is.

9 MS. DUGAN-HINRICHS: Government offers Exhibit 15.

10 MR. LEVY: No objection.

11 THE COURT: Exhibit 15 is received.

12 MS. DUGAN-HINRICHS: May I have permission to
13 publish it, Your Honor?

14 THE COURT: Yes, you may.

15 BY MS. DUGAN-HINRICHS:

16 Q. Exhibit 15 at the bottom bears a signature, correct?

17 A. Correct.

18 Q. And whose signature is this?

19 A. Jerome Bass's signature.

20 Q. And did you witness him putting it on there?

21 A. Yes. I asked him to affix his signature and I witnessed
22 it.

23 Q. Is that for the same reasons you earlier described?

24 A. Yes.

25 Q. Was that after he said yes, after you advised him of all

1 those rights?

2 A. That's correct, yes.

3 Q. Can you describe for me, sir, that second interview on
4 October 14th?

5 A. Yes, it was not as long as the first. The simple reason
6 was to go down and to have him review this statement.

7 I didn't ask him any new questions. I just had him
8 review the statement.

9 And he asked if he could make some corrections and
10 I said yes, he could.

11 Q. Sir, let me ask you, this isn't the first interview that
12 you've conducted of a defendant, correct?

13 A. Correct.

14 Q. And do you often give defendants the opportunity to
15 review your report and make changes?

16 A. No.

17 Q. Why did you afford Jerome Bass this opportunity?

18 A. For the reasons I cited initially. In fairness to him
19 and, secondly, I have had a lot of experience in federal
20 court and I just wanted to make sure I covered all bases,
21 that this was a voluntary statement.

22 Q. When you came back to him on that next day did you hand
23 him the report and let him read it?

24 A. Yes.

25 Q. Was it then that he requested to make some changes?

1 A. Yes.

2 Q. What changes did he make?

3 A. I gave him an ink pen and there are specific changes, if
4 I can refer to my report.

5 Q. Would that refresh your recollection?

6 A. Yes, it would be.

7 Q. Please do so.

8 A. Change number one he made one was to page three,
9 paragraph one.

10 The original statement was RO, meaning myself,
11 asked Jerome Bass to clarify the term clean and Jerome Bass
12 responded by saying that he had not been involved with the
13 use of crack cocaine.

14 His correction was he removed the word use and
15 changed it with delivery.

16 And he added that he also stopped socializing with
17 these individuals after Lamar Bass was arrested.

18 Q. So it wasn't a substantive change to his statement that
19 he didn't deliver crack cocaine, correct?

20 A. Correct.

21 Q. It dealt with changing use to delivery, correct?

22 A. Correct.

23 Q. And he added the part about when his association or
24 socialization ended, correct?

25 A. Correct.

1 Q. Did the defendant make any additional changes, other
2 than the one you've just described?

3 A. He made one more change.

4 Q. What was that?

5 A. That was page three, paragraph two.

6 Q. What did he change?

7 A. The original sentence was, "Jerome Bass said he was
8 present and observed numerous 37th Street Crips sell crack
9 cocaine from this residence."

10 Q. And what did he change that sentence to?

11 A. The correction was, "Jerome Bass said he was present to
12 observe numerous 37th Street Crips passing items to other
13 people which possibly contained crack cocaine at this
14 residence."

15 Q. And those two changes that you've just described, sir,
16 what did you do with that information after those changes
17 were given to you?

18 A. I penned and inked them on the statement, I returned to
19 my office and made the corrections appropriately,
20 highlighted the new corrections in the statement and
21 published the report.

22 Q. So that your report accurately reflects those changes
23 that he made?

24 MR. LEVY: Objection, leading.

25 THE COURT: Sustained.

1 BY MS. DUGAN-HINRICHS:

2 Q. Sir, the final report you generated, does that
3 accurately reflect the defendant's statement?

4 MR. LEVY: Objection, relevance. It's not in
5 evidence.

6 THE COURT: Sustained.

7 BY MS. DUGAN-HINRICHS:

8 Q. Sir, after those two changes that you've just described,
9 did the defendant agree with the remaining portions of your
10 report?

11 A. I asked him was this all the corrections that he wanted
12 to make and he said yes.

13 I told him that I would make the changes,
14 incorporate it in the report, and then publish it.

15 Q. How long did that second interview take?

16 A. On Exhibit 15 it says I started at 0937 hours and then
17 it said ended at 0950.

18 There is a mistake on my part about when the time
19 of the rights advisory began. That should read 0937.

20 Q. With regard to when you administered his rights?

21 A. Yes. The interview started at 0937. I read him his
22 rights at the same time.

23 Q. And so when Exhibit 15 says time ended, is that the time
24 you concluded your Mirandizing him or you concluded your
25 interview?

1 A. That's when I concluded the interview, after I asked him
2 if that was the final changes.

3 Q. During the second interview which took place on October
4 14, 2004, did the defendant exhibit any signs of impairment?

5 A. No.

6 Q. Was he sleepy or confused?

7 A. No.

8 Q. Was he coherent?

9 A. Yes.

10 Q. Did he understand your questions?

11 A. Yes.

12 Q. Did he ever refuse to answer any of your questions?

13 A. I didn't ask him any new questions, but he didn't refuse
14 anything that we talked about. He just made the changes.

15 Q. Did you make him any promises during that second
16 interview?

17 A. No.

18 Q. Any threats?

19 A. No.

20 Q. Now, when you told the defendant that he was under
21 arrest, you told him what the charges were, correct?

22 A. Yes.

23 Q. Did you tell him what time frame that included?

24 A. No. I just told him for over the past couple of years.

25 Q. Did you tell him who his co-conspirators were?

1 A. I believe so, yes.

2 Q. Do you recall any names specifically?

3 A. I don't know if I told him, but I probably said
4 something to the effect of some of the people from 37th
5 Street.

6 MR. LEVY: Your Honor, I move to strike that as
7 speculation. If he doesn't remember, what he probably did
8 is irrelevant.

9 THE COURT: Overruled. His qualification speaks
10 for itself.

11 BY MS. DUGAN-HINRICHS:

12 Q. Sir, one of those individuals was William Hawkins,
13 correct?

14 MR. LEVY: Objection, leading; relevance.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: I believe so, yes.

17 BY MS. DUGAN-HINRICHS:

18 Q. And another one of those people was Karlos Harper,
19 correct?

20 A. Yes.

21 Q. JeVaughn Erwin?

22 MR. LEVY: Same objection, Judge, relevance.
23 Hearsay. Foundation. Whatever.

24 THE COURT: The only one I'm concerned about is the
25 leading question.

1 I'm going to sustain the objection on leading from
2 this point forward, so I'll sustain the objection to this
3 question.

4 BY MS. DUGAN-HINRICHS:

5 Q. Sir, when you talked to the defendant about his crack
6 distribution activities in your October 13th interview --

7 MR. LEVY: I object to the form of the question.

8 THE COURT: Sustained.

9 BY MS. DUGAN-HINRICHS:

10 Q. When the defendant told you who he made deliveries to,
11 who did he tell you?

12 A. William Hawkins, Terrell Jackson, Karlos Harper,
13 JeVaughn Erwin.

14 Q. And he got those items to be delivered from his brother
15 Lamar, correct?

16 A. Yes.

17 Q. He told you that?

18 A. Yes, he did.

19 MS. DUGAN-HINRICHS: May I have a moment, Judge?

20 THE COURT: Yes, you may.

21 BY MS. DUGAN-HINRICHS:

22 Q. Officer Gassaway, I believe you said you were the case
23 agent for Terrell Jackson.

24 A. Yes.

25 Q. Did you have the occasion to conduct proffer interviews

1 of Terrell Jackson?

2 A. Yes.

3 Q. Were you the case agent in the case of Karlos Harper?

4 A. Yes.

5 Q. Did you have the occasion to conduct proffer interviews
6 or an interview with Karlos Harper?

7 MR. LEVY: That's objected to as having been asked
8 and answered.

9 THE COURT: I don't believe that it has completely.
10 It has been partially asked and answered, so I'm going to
11 overrule the objection. You may proceed.

12 MS. DUGAN-HINRICHS: Thank you, sir.

13 THE WITNESS: Yes

14 BY MS. DUGAN-HINRICHS:

15 Q. How about Lamar Bass?

16 A. Yes.

17 Q. How many proffers did Lamar Bass give?

18 A. I believe five.

19 Q. And you were the case agent in that case?

20 A. Yes.

21 Q. Sir, through your interviews, proffer or otherwise, with
22 Lamar Bass, Terrell Jackson, Karlos Harper and Jerome Bass,
23 were you able to establish that hierarchy or familial
24 relationship in this 37th Street Gang?

25 MR. LEVY: That's objected to as hearsay.

1 THE COURT: Sustained.

2 MS. DUGAN-HINRICHS: Your Honor, may we approach?

3 THE COURT: Yes, you may.

4 (The following proceedings were had out of the
5 hearing of the jury:)

6 MS. DUGAN-HINRICHS: Your Honor, I'm trying to
7 solicit co-conspirator statements offered in furtherance of
8 the conspiracy to show the organization and the defendant's
9 role in this conspiracy.

10 And I have established in accordance with the
11 Eighth Circuit case law that a conspiracy existed; that he
12 and these declarants are members of that conspiracy, and the
13 officer testified about these proffers were conducted and
14 told who they spoke to, who they dealt with, so they are in
15 furtherance of this conspiracy, and I would like to elicit
16 that information of the co-conspirators.

17 MR. LEVY: In response, these are all post-arrest
18 statements of maybe former co-conspirators, but they are not
19 conspirators.

20 They are proffer statements of who maybe were
21 conspirators, and that doesn't cover the situation where you
22 have a post-arrest statement of a conspirator unless it
23 perhaps is given to hide the conspiracy or defeat discovery
24 of the conspirators. This is clearly hearsay.

25 THE COURT: Can I see the case? I think I'll

1 dismiss the jury.

2 (The following proceedings were had in the hearing
3 of the jury:)

4 THE COURT: Ladies and gentlemen, I have an
5 evidentiary issue. We are going to take about a five minute
6 recess. We are in recess.

7 (The following proceedings were had out of the
8 hearing of the jury:)

9 THE COURT: The record should reflect we are
10 outside the presence of the jury.

11 I have had a chance to review the case provided to
12 me by counsel for the government, United States versus
13 Michael Bell, cited at 573 F.2d 1040, a 1978 case, decided
14 in the Eighth Circuit.

15 This is generally the law as I understand it and
16 the case stands for the proposition, and I think that this
17 is still the law, that the court has to make a determination
18 by a preponderance of the evidence that a conspiracy
19 existed; that the defendant and the declarant are members of
20 the conspiracy; and that the declaration was made in the
21 course of and in furtherance of the conspiracy.

22 It's my understanding that the government believes
23 that it has created a prima facie case concerning the
24 conspiracy and the defendant's participation in the
25 conspiracy and therefore any statements made by

1 co-defendants are admissible. Is that my understanding, Ms.
2 Dugan-Hinrichs?

3 MS. DUGAN-HINRICHs: That is my argument, yes,
4 Judge. Just so you know, sir, in reviewing current Eighth
5 Circuit cases in 2005, I was referred back to Bell. So it's
6 still good law.

7 THE COURT: That's my understanding.

8 MR. LEVY: May I be heard? I don't disagree Bell
9 is the law.

10 What I disagree with is that Bell sets out the
11 procedure for the conditional admission of hearsay which is
12 offered under Rule 801(d)(2)(A).

13 And 801(d)(2)(A) says, as the court just said it
14 says, the statement is not hearsay if it's made by one
15 co-conspirator to another co-conspirator during the course
16 of the conspiracy and in furtherance of it.

17 Well, when you've got a post-arrest proffer by one
18 conspirator, that declarant is hardly a conspirator anymore.

19 He's under arrest, he's under an indictment, it's
20 not in furtherance of a conspiracy which that declarant is
21 no longer a member.

22 THE COURT: I want to understand what your
23 position is.

24 MR. LEVY: It's 802(d)(2)(E); not (d)(2)(A).
25 801(d)(2)(E).

1 THE COURT: A statement by a co-conspirator of a
2 party during the course and in the furtherance of the
3 conspiracy. I want to be sure what your position is. If
4 the co-conspirator made a statement --

5 MR. LEVY: First of all, he must be a
6 co-conspirator of the defendant.

7 He's not a co-conspirator of the defendant because
8 he's under arrest and he's under indictment.

9 THE COURT: That has to do with whether or not the
10 government has made a prima facie case about the conspiracy.

11 MR. LEVY: No, but what she's offering is
12 statements made by Hawkins during a proffer.

13 THE COURT: Right, and Hawkins is going to say
14 blah-blah-blah.

15 MR. LEVY: Yes. So at that point Hawkins is not a
16 co-conspirator of Mr. Bass.

17 THE COURT: What is he?

18 MR. LEVY: He's a defendant. The conspiracy is
19 over as far as Mr. Hawkins is concerned.

20 He can't be furthering a conspiracy of which he's
21 no longer a member because he's under arrest.

22 THE COURT: A statement by a co-conspirator of a
23 party during the course and in the furtherance of the
24 conspiracy. That's true, because it's post-conspiracy.

25 MS. DUGAN-HINRICHS: But, Your Honor, they are made

1 regarding the activities during the active conspiracy.

2 THE COURT: Here is the whole problem I have.
3 There is an issue with the confrontation clause.

4 That's the first problem that I have and you want
5 to put in statements by a co-conspirator through a police
6 officer that took a proffer from that co-conspirator.

7 So we are not talking about a statement by a
8 co-conspirator at the time or in furtherance of the
9 conspiracy.

10 We are talking about a proffer statement of a
11 co-conspirator to a police officer who then talks about what
12 the co-conspirator did.

13 And that's where I have a problem with the
14 confrontation clause.

15 The problem with 801, if I had a statement of a
16 co-conspirator about something that the defendant said, or
17 another co-conspirator said in the course of or in
18 furtherance of the conspiracy, I don't think I would have
19 much trouble in introducing it.

20 But here I don't have that. I have a confession,
21 so to speak, of a co-conspirator given to a police officer.

22 And then the police officer provides that
23 information about what that co-conspirator did.

24 MR. LEVY: Can I read to you from this Federal
25 Courtroom Evidence?

1 801(d)(2)(E) provides that a statement of a
2 co-conspirator is not hearsay if all of the following
3 requirements are met.

4 There was a conspiracy of which both the declarant
5 and the person against whom the statement is offered were
6 members.

7 The declarant made the statement in the course of
8 that conspiracy.

9 The declarant made the statement in the furtherance
10 of that conspiracy.

11 Now, maybe the first part, there was a conspiracy,
12 is okay, but there certainly is no longer a conspiracy when
13 it's a post-arrest, post-indictment proffer to a police
14 officer and it's certainly not in furtherance of any
15 conspiracy.

16 THE COURT: Do you have any other case law,
17 Ms. Dugan-Hinrichs?

18 MS. DUGAN-HINRICHs: No, sir. That's all I've got.
19 I appreciate and understand where the court and Mr. Levy are
20 coming from, but --

21 THE COURT: I don't know if I agree with what
22 Mr. Levy is saying. My problem is with the confrontation
23 issue.

24 MS. DUGAN-HINRICHs: I understand that. I guess,
25 Judge, to counter his argument, for purposes of argument,

1 let's say that Officer Gassaway had contact with these
2 co-conspirators while they were still in the conspiracy.

3 Then could he testify to that information they gave
4 him?

5 Or do I have to put the co-conspirators on the
6 stand about that information?

7 THE COURT: I'm not so sure about the temporality
8 argument that Mr. Levy is making.

9 My problem really does come down to the
10 confrontation issue.

11 And that is I'm not hearing a statement by a
12 co-conspirator who was in the context of the conspiracy.

13 I'm hearing a statement that is basically a
14 confession by a co-conspirator, but I don't hear it from the
15 co-conspirator.

16 He's not subject to cross-examination, and I'm
17 hearing it from a police officer who doesn't have a tape
18 recording of it, doesn't have anything recorded except his
19 memory and a report someplace.

20 And we put it all together after it's all over,
21 after a gun is to everybody's head.

22 I know that may or may not be relevant to what the
23 rule is, but it's certainly relevant to whether the
24 statement is credible or not.

25 I think that what I would like to do is to take

1 this matter under advisement until I have had a chance to do
2 a little research on this issue as opposed to what I have
3 right here.

4 Officer Gassaway is here and he's your
5 representative throughout the course of the trial.

6 And then once I have a little bit more evidence
7 about what the conspiracy is, because I'm not sure you've
8 made a prima facie case on the conspiracy to begin with, and
9 I get a better idea of where your witnesses are coming from,
10 if you want to use Officer Gassaway to impeach some of those
11 witnesses with respect to their testimony you're certainly
12 able to do that, and if you can't get a witness in, or there
13 is a problem with a witness and you want to use Officer
14 Gassaway to testify on that part of the evidence, then I'll
15 reconsider this matter.

16 But right now I'm not prepared to allow him to
17 testify about statements that are made in a post-arrest
18 situation that are basically confessions of other
19 co-conspirators about their conduct or somebody else's
20 conduct. So for the time being your objection is sustained.

21 Do you have any further interrogation of Officer
22 Gassaway at this juncture?

23 MS. DUGAN-HINRICHS: I do have a couple additional
24 questions for Officer Gassaway.

25 THE COURT: We will bring the jury back out.

1 (The following proceedings were had in the hearing
2 of the jury:)

3 THE COURT: Officer, you are still under oath. You
4 may proceed, Ms. Dugan-Hinrichs.

5 MS. DUGAN-HINRICHs: Thank you, Your Honor.

6 DIRECT EXAMINATION (CONT'D)

7 BY MS. DUGAN-HINRICHs:

8 Q. Officer Gassaway, you had the occasion to conduct an
9 interview with the defendant, Jerome Bass, on October 13th,
10 correct?

11 A. Yes.

12 Q. That was the first interview?

13 A. Yes.

14 Q. And, sir, was that interview tape recorded or video
15 recorded?

16 A. No, the interview room, there is no recording capability
17 at 30th and --

18 MR. LEVY: Move to strike the last part of the
19 answer as not responsive. Everything after no.

20 THE COURT: Overruled.

21 BY MS. DUGAN-HINRICHs:

22 Q. Sir, had you chosen to conduct a recorded interview of
23 Mr. Bass, where would you have had to go?

24 A. I would have had to transport him to central station, to
25 our CIB fourth floor.

1 Q. And why did you choose not to do that?

2 A. Because I wanted to conduct the interview right away, or
3 the interrogation right away. I didn't want to wait some
4 thirty minutes to conduct the interview.

5 Q. And why did you make that tactical decision?

6 A. Well, the purpose of an interrogation is to elicit a
7 confession, and I wanted to employ the strategy of talking
8 to Mr. Bass right away, rather than transporting him to
9 central station and taking a chance that an interview room
10 wasn't available and having him sit and wait for an unknown
11 amount of time.

12 Q. So the fact that it was close in time to when he was
13 arrested on the federal indictment was important to you?

14 MR. LEVY: Objection, leading.

15 THE COURT: Sustained.

16 BY MS. DUGAN-HINRICHS:

17 Q. Sir, the second interview with the defendant, was that
18 recorded?

19 A. No.

20 Q. How come?

21 A. I wasn't going to ask him any further questions. I just
22 wanted him to review it and make any changes so I could
23 submit the report.

24 Q. Sir, after your contact with Jerome Bass on October
25 14th, did you do any further investigation in relation to

1 this case?

2 A. Yes.

3 Q. And when did that come about?

4 A. Just recently.

5 Q. What happened to prompt additional investigation?

6 A. I received a phone call from one of the co-conspirator's
7 mother, at which time she told me that --

8 MR. LEVY: Objection, hearsay.

9 THE COURT: Sustained.

10 BY MS. DUGAN-HINRICHS:

11 Q. Who did you get a phone call from?

12 A. Marie Harper.

13 Q. Whose mom is she?

14 A. She's the mother of Karlos Harper.

15 Q. And he's one of the co-conspirators, correct?

16 A. Yes.

17 Q. And after you had that conversation with her, did you do
18 some further investigation?

19 A. Yes.

20 Q. How come?

21 A. I was contacted by her, at which time in our
22 conversation she related that she was contacted on several
23 different occasions by Jerome Bass.

24 And she stated that Jerome Bass was trying to get
25 in touch with Karlos, wanted her to --

1 MR. LEVY: Objection, hearsay, what she said.

2 THE COURT: Sustained.

3 MR. LEVY: Move to strike.

4 THE COURT: I'll sustain the motion to strike from
5 the time that you have interposed the objection.

6 MR. LEVY: Very well.

7 BY MS. DUGAN-HINRICHS:

8 Q. Sir, after you had the occasion to talk with Marie
9 Harper, did you conduct additional investigation to
10 corroborate or verify her information?

11 A. Yes.

12 Q. What did you do?

13 A. I participated in a three-way conversation between
14 Marie Harper, myself, and Jerome Bass.

15 Q. And when did that occur?

16 A. The first of September of 2005.

17 Q. Could you tell us how that came about?

18 A. I was contacted and it was related that Marie Harper was
19 upset because --

20 MR. LEVY: Objection, Your Honor, to everything
21 after --

22 THE COURT: Sustained.

23 MR. LEVY: -- it was related.

24 BY MS. DUGAN-HINRICHS:

25 Q. Did you initiate this call to Marie Harper or she to

1 you?

2 A. She contacted me.

3 Q. Did you participate in overhearing a conversation
4 between the defendant, Jerome Bass, and Marie Harper?

5 A. Yes.

6 Q. And what did the defendant say during that conversation?

7 A. He said that he wanted to get ahold of Karlos, who was
8 in jail, and wanted to find out what he was going to do,
9 meaning was he going to testify in this trial against him.

10 Q. And was that the majority of that conversation?

11 A. Yes. There was some small talk, but the essence of the
12 conversation, that was pretty much it.

13 Marie Harper responded by saying, "Why do you want
14 to get ahold of him?"

15 Q. And did Mr. Bass say why he was trying to get in touch
16 with Karlos Harper?

17 A. Yes.

18 Q. What did he say?

19 A. He said he wanted to find out where Karlos was and if he
20 was going to testify against him.

21 Q. Did he say why that information was important to him?

22 A. Vaguely he said that, you know, he just wanted to know
23 what he was going to do.

24 I encapsulated it in a police report and I can
25 refresh the exact language. I can tell you the exact

1 language if I had a copy.

2 Q. Would reviewing your report refresh your recollection?

3 A. Yes.

4 MS. DUGAN-HINRICHS: May I approach, Your Honor?

5 THE COURT: Certainly.

6 BY MS. DUGAN-HINRICHS:

7 Q. Have you had a chance to review your report?

8 A. Yes.

9 Q. Does that refresh your recollection as to what the
10 defendant said, why he wanted to get in touch with Karlos?

11 A. Yes.

12 Q. What did the defendant say?

13 A. He added that he wanted to know -- he stated that if
14 Karlos testified that he wouldn't be able to beat his case
15 and he was worried. He wasn't worried about anyone else but
16 Karlos.

17 Q. Sir, this individual we have been talking about,
18 Mr. Jerome Bass, is he present in court today?

19 A. Yes, he is.

20 Q. Would you please describe where he's seated and what
21 he's wearing?

22 A. African-American male sitting next to Mr. Levy with blue
23 shirt, blue tie, with suspenders.

24 MS. DUGAN-HINRICHS: May the record reflect the
25 witness identified the defendant, Jerome Bass?

1 THE COURT: It shall.

2 BY MS. DUGAN-HINRICHS:

3 Q. Did Mr. Bass at any time during any one of your contacts
4 with him ever tell you what his nickname was?

5 A. I don't think so, but I knew that his nickname was
6 Rommie.

7 Q. Other than Marie Harper, did you have the occasion to
8 conduct any additional investigation after September 1,
9 2005, in relation to this case?

10 A. Yes.

11 Q. And what did you do?

12 A. Again, I was contacted by another individual by the name
13 of Tamika Rush, who is the fiancée of Karlos Harper.

14 Q. And what did you do with the information that Tamika
15 Rush provided to you?

16 A. It was left on my voice mail message. I was out of
17 town.

18 Upon return I listened to the message and
19 encapsulated it in a police report.

20 Q. What was the substance of that message?

21 A. Basically --

22 MR. LEVY: Objection, Your Honor, hearsay.

23 THE COURT: Sustained.

24 MS. DUGAN-HINRICHS: May I approach, Judge?

25 THE COURT: Yes, you may.

1 BY MS. DUGAN-HINRICHS:

2 Q. Officer Gassaway, I've handed you what I have marked as
3 Exhibit 19. Can you tell me what that is?

4 A. Yes. It's an Omaha police supplementary report dated --
5 the original report date is Wednesday, October 13, 2004,
6 1500 hours.

7 The report was completed on Thursday, October 14,
8 2004, at 1800 hours.

9 It bears RB number 5278E and it is the statement
10 that I wrote in regards to the interview or interrogation
11 with Jerome Bass.

12 Q. Is that, sir, the report that you have been referring to
13 to refresh your recollection and to make sure that you were
14 accurate in your testimony about what the defendant's words
15 were?

16 A. Yes.

17 MS. DUGAN-HINRICHS: The government offers
18 Exhibit 19.

19 MR. LEVY: The defendant objects on the basis of
20 hearsay, relevance, foundation.

21 THE COURT: I'm going to take that under
22 advisement. I am concerned about the authentication issues
23 and I will take that up with counsel outside the presence of
24 the jury. You may proceed, ma'am.

25 MS. DUGAN-HINRICHS: Judge, I don't have any

1 further questions at this time.

2 THE COURT: Mr. Levy?

3 MR. LEVY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. LEVY:

6 Q. While we have Marie Harper fresh in our minds, Officer
7 Gassaway, you were asked what Jerome Bass said to Marie in
8 your hearing, correct?

9 A. I'm sorry, in the --

10 Q. Within your hearing?

11 A. Yes.

12 Q. And you went to your police report and you told the jury
13 what Marie Bass said as far as you heard?

14 A. I wanted to be accurate, yes.

15 Q. I said Marie Bass. I meant Marie Harper.

16 A. Yes.

17 Q. You didn't tell the jury everything Marie Harper said,
18 did you?

19 A. I answered the question that was posed to me.

20 Q. In the way you wanted to?

21 A. No, not at all.

22 Q. "Jerome Bass responded by saying if Karlos testified he
23 wouldn't beat his case." You testified to that, correct?

24 A. That's what I was asked.

25 Q. But Jerome Bass also said he wasn't worried about anyone

1 else because they were lying, isn't that correct?

2 A. I did say that.

3 Q. I'm not going to quibble with you, Officer Gassaway --

4 A. I'm not going to quibble with you either.

5 Q. You didn't say that he was not worried about everybody
6 because they were lying; you only said he wasn't worried
7 about everybody, period.

8 A. I believe I said --

9 Q. Is that true?

10 A. I believe I said because he was lying.

11 Q. Then you didn't tell the jury that in response to Marie
12 Harper saying to Jerome Bass that he was involved in drug
13 dealing, that Jerome Bass denied being involved with drugs,
14 didn't he?

15 A. Yes, he did.

16 Q. And Jerome Bass didn't know you were on the line, did
17 he?

18 A. No, he did not.

19 Q. But he did also say that everyone was lying on him to
20 get back at Lamar; isn't that true?

21 A. No, that's not true.

22 Q. Are you saying that Jerome Bass did not say everyone is
23 lying on him to get back at Lamar?

24 A. If I can refer to my police report for accuracy.

25 Q. First paragraph.

1 A. Yes, he did say that.

2 Q. So that the jury is clear on this, Jerome Bass said to
3 Marie Harper that everyone was lying on Jerome to get back
4 at Lamar?

5 A. Yes, he did.

6 Q. And by that you know that everyone that Lamar has
7 proffered on is going to testify in this case, correct?

8 A. I assume that's what he was talking about, yes.

9 Q. And it is a concern of law enforcement in investigating
10 these proffers, these drug dealers who turn on their
11 fellows, that they not do so because of retaliation. You
12 are aware that that's a possibility, aren't you?

13 A. I'm not sure. Can you rephrase that?

14 Q. I will ask it later. Now, you testified that you went
15 to see Jerome a second time for two reasons.

16 One, that you wanted to be fair with Jerome, and,
17 two, to make sure you were covered.

18 A. That's correct.

19 Q. What do you mean by making sure you were covered?

20 A. To avoid what you're about to do right now; to ensure
21 that the statement was accurate as he told it to me.

22 Q. I am glad you know what I'm about to do. I very seldom
23 know myself.

24 You wanted to be covered against any accusation
25 that you were writing something down that wasn't true?

1 A. Absolutely, yes.

2 Q. You wanted to be covered against any accusation that you
3 were writing something down inaccurately?

4 A. Yes. I didn't write anything down inaccurately.

5 Q. Just answer the question. You wanted to be sure you
6 were covered and not being accused that you had written
7 something down inaccurately?

8 A. Yes.

9 Q. You wanted to be covered and not being accused that you
10 were making stuff up?

11 A. I wasn't making anything up, that's correct.

12 Q. If you would answer the question. You wanted to make
13 sure you were covered against the accusation that you were
14 making stuff up?

15 A. Yes.

16 Q. All right. You didn't have a tape recording to make
17 sure you were covered, correct?

18 A. Correct.

19 Q. You didn't have a video recording to make sure you were
20 covered, correct?

21 A. Correct.

22 Q. You didn't have a partner in the interrogation room to
23 make sure you were covered?

24 A. Correct.

25 Q. You didn't keep your notes, did you?

1 A. No, I did not.

2 Q. You made handwritten notes of what you claimed Jerome
3 told you on the 13th of October?

4 A. Yes.

5 Q. And you took those notes back to the Omaha Police
6 Department, along with Jerome, and from those notes your
7 report was prepared by someone else?

8 A. I didn't take Mr. Bass with me to prepare my report.

9 Q. I will try the question again. As you were talking to
10 Jerome you took handwritten notes?

11 A. Yes.

12 Q. You took the notes back to OPD and you had someone type
13 up the report from those notes?

14 A. Yes.

15 Q. And then you threw the notes away?

16 A. Yes.

17 Q. We don't have those to look at, do we?

18 A. No, we don't.

19 Q. You would have been covered a little bit better if we
20 had those notes today, wouldn't you?

21 A. Not necessarily, no.

22 Q. You would have been covered a little bit better if you
23 had a tape recording, wouldn't you?

24 A. There was no facility, no tape recording equipment
25 available.

1 Q. Officer Gassaway, tape recording equipment is available
2 to the gang unit, isn't it?

3 A. Yes, it is.

4 Q. You know how to use it, don't you?

5 A. Yes, I do.

6 Q. You chose not to, didn't you?

7 A. I did not have it with me that day.

8 Q. You chose not to use it, didn't you?

9 A. That's correct.

10 Q. Now, back to the statement itself. The only thing
11 contained in that statement is Jerome Bass telling you he
12 could possibly be involved with crack cocaine, correct?

13 A. That's not the only thing.

14 Q. You asked Jerome if he was involved with crack cocaine,
15 he offered several explanations as to why he possibly could
16 be involved with crack cocaine, but he never said proof
17 positive yes, isn't that correct?

18 A. That's partially correct, yes.

19 Q. That is correct, isn't it?

20 A. He mentioned that he thought he was delivering crack
21 cocaine to someone and he gave reasons why he thought it was
22 crack cocaine that he was delivering.

23 Q. He gave you explanations relative to crack cocaine which
24 were more in the nature of excuses than they were
25 confessions; isn't that true?

1 A. No, not to me.

2 Q. Do you remember testifying in this case at a suppression
3 hearing?

4 A. Yes.

5 MR. LEVY: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 BY MR. LEVY:

8 Q. You were under oath, weren't you?

9 A. Yes, I was.

10 Q. Do you recall me asking you a question, "So he gave you
11 explanations which were more in the nature of excuses than
12 they were confessions," and your answer was, "Yes."

13 A. Yes.

14 Q. Do you remember that?

15 A. Yes.

16 Q. He gave you explanations in which he characterized his
17 involvement as possibilities, not probabilities or
18 certainty?

19 A. Yes.

20 Q. After you got out of the Air Force, what was your next
21 employment?

22 A. I joined the police department. I have had two jobs
23 since I have been 18.

24 Q. You joined the Omaha Police Department?

25 A. Yes.

1 Q. And you told the jury about certain honors and awards
2 that you have been given. Who gave those awards?

3 A. Crime Stoppers here in Omaha, Nebraska, and the law
4 enforcement, basically it's a U.S. Attorney driven award for
5 state law enforcement officers.

6 Q. The prosecutor gave you an award for being a good police
7 officer?

8 A. The law enforcement coordinating committee presented the
9 award.

10 Q. Do you believe it is illegal to belong to a gang?

11 A. No.

12 Q. Do you believe Jerome Bass is a member of a gang?

13 A. He's not a documented member.

14 Q. Do you believe that he's a member of a gang? Yes or no.

15 A. Yes.

16 Q. Which gang?

17 A. 37th Street.

18 Q. Do you have any documentation to back you up in that
19 regard?

20 A. If you are asking if he's officially documented in our
21 gang file, no, he's not.

22 Q. You do have gang files, don't you?

23 A. Yes, we do.

24 Q. Gang files are maintained by officers in addition to
25 yourself?

1 A. Yes.

2 Q. As a result of intelligence?

3 A. Yes.

4 Q. Obtained as a result of information from other gang
5 members and observations by the police, correct?

6 A. Yes.

7 Q. And you don't have any documented evidence that Jerome
8 Bass is a gang member, do you?

9 A. Not in our gang file, but we have documented evidence
10 that he associates with 37th Street.

11 Q. Sure. He associates with his brother, doesn't he?

12 A. And others, yes.

13 Q. Whether or not you believe you can use controlled buys
14 or undercover buys, there weren't any undercover buys or
15 controlled buys of narcotics made from Jerome Bass?

16 A. No.

17 Q. Or attempted?

18 A. No.

19 Q. There was no trash pull from Jerome Bass's residence?

20 A. No.

21 Q. By trash pull, you know what I'm talking about, grabbing
22 somebody's garbage and going through it to see if there is
23 evidence of drugs or drug dealing?

24 A. Yes, as I explained earlier.

25 Q. You don't have any drug evidence against Jerome Bass, do

1 you?

2 A. Not other than statements, no.

3 Q. You don't have any bags of crack?

4 A. No, sir.

5 Q. Piles of money?

6 A. No. No, sir.

7 Q. Don't have any surveillance?

8 A. No, sir.

9 Q. When Jerome Bass was arrested, did he try to flee?

10 A. No.

11 Q. When Jerome Bass was arrested, did he try to resist
12 arrest?

13 A. No.

14 Q. When Jerome Bass was arrested, was he searched?

15 A. Yes.

16 Q. Were there any drugs found on him?

17 A. No.

18 Q. Were any drug records found on him?

19 A. No.

20 Q. Were any guns found on him?

21 A. No.

22 Q. When you first questioned Jerome Bass about his
23 involvement in crack cocaine, he said he was not involved in
24 the transportation, the use, or possession of crack cocaine,
25 correct?

1 A. Yes. He denied being involved in any form, yes.

2 Q. Wasn't that good enough for you?

3 A. I didn't believe him.

4 Q. Obviously. Why didn't you say just okay, let's go to
5 jail, we have a warrant, why didn't you do that?

6 A. Because I didn't believe him.

7 Q. You didn't believe him when he gave you the statement
8 that he gave you, did you?

9 A. No, not in its entirety. I think he minimized his
10 involvement.

11 Q. You didn't believe him?

12 A. I did not believe him, no.

13 Q. And you didn't believe him because he didn't admit that
14 he knew that what he was transporting was crack cocaine,
15 correct?

16 A. Correct.

17 Q. So what he admitted was smoke but not fire?

18 A. What he admitted was minimization of his involvement.

19 Q. And that's not what you wanted to hear?

20 A. That's not what I believed.

21 Q. Not what you wanted to hear either, is it?

22 A. As I stated earlier, the purpose of interrogation is to
23 obtain a full confession.

24 Q. You didn't do that?

25 A. He did not confess fully. He admitted to some --

1 Q. Possibilities?

2 A. -- some things.

3 Q. Possibilities?

4 A. Yes, possibilities.

5 Q. But not probabilities and not certainties, correct?

6 A. Correct.

7 THE COURT: Mr. Levy, how close are you?

8 MR. LEVY: Not even.

9 THE COURT: I didn't think so. Ladies and
10 gentlemen, I think at this time we will adjourn for today.

11 It's generally my practice to end at 5:00 o'clock
12 because I know some of you have obligations outside of
13 business or work.

14 So if we are going to go long I will try to let you
15 know that at least a day before, but generally speaking
16 we'll end at 5:00.

17 Tomorrow I have a hearing at 8:30 and I have a
18 hearing at 1:00.

19 So we are going to readjourn tomorrow morning at
20 9:00 o'clock and then continue with the evidence.

21 Officer Gassaway will be on the stand. He'll
22 continue to be under oath.

23 There are a couple of things I want to tell you
24 before you leave.

25 First of all, whatever evidence comes in this case

1 for your consideration can only come inside the courtroom.

2 If you go home and talk to a member of your family
3 or to other persons about what you've heard they will tell
4 you what they think ought to be done.

5 They will give you information that neither of
6 these parties are going to be able to respond to.

7 If you go out and do a little research on the
8 internet, do a little research at the library, you're going
9 to get information that neither one of these parties is
10 going to be able to respond to, and that's what this is all
11 about.

12 Evidence comes in the courtroom. Both sides get an
13 opportunity to respond to that information so that you can
14 make an informed decision.

15 If you go out and do any research or talk to
16 anybody else, neither one of these parties has the
17 opportunity to respond to that information, and that is not
18 fair to either one of them.

19 So when you go home tonight you shouldn't talk to
20 anybody about the facts of this case, and you should keep
21 your own counsel, and then when the case is over and you've
22 made a decision you can go back and talk to whomever you
23 would like or do whatever research you want to do.

24 But in fairness to both of these parties, while
25 we're in court you need just to keep your own counsel.

1 And then the other thing is that you can't talk
2 among yourselves about this until all the evidence is in and
3 you have to keep an open mind about the evidence until all
4 the evidence is completed.

5 The government puts on its case first and then the
6 defendant has an opportunity to respond, or the government
7 puts on its case first and then there's cross-examination as
8 we're doing today.

9 It's important to keep an open mind until both
10 sides have had an opportunity to present everything that you
11 need to hear.

12 We will see you tomorrow morning at about 9:00 a.m.
13 We are in recess.

14 (The following proceedings were had out of the
15 hearing of the jury:)

16 THE COURT: Exhibit 19, the statement, generally
17 speaking police reports are not evidence and are not
18 admissible because they are hearsay and the witness that
19 testified to the police report is present in court subject
20 to cross-examination and that is basically the best
21 evidence.

22 I note from the testimony that Officer Gassaway has
23 attempted to make this an authenticated record, much the way
24 as a handwritten confession might be, or a confession that's
25 typed out and then signed by the defendant.

1 It seems to me that if we are going to have a
2 record that is going to be admitted, then the least we ought
3 to have is a signature on it or something else and we don't.

4 And so I am going to sustain the hearsay objection
5 by the defense counsel with respect to Exhibit 19.

6 THE COURT: Anything further, Ms. Dugan-Hinrichs?

7 MS. DUGAN-HINRICHS: No.

8 THE COURT: Mr. Levy?

9 MR. LEVY: Do you want any authority on the
10 post-arrest?

11 THE COURT: If you have any I would like to see it
12 and, Ms. Dugan-Hinrichs, if you have some additional
13 authority I would like to see it.

14

15 (5:10 p.m. - Adjournment)

16

17

18

19

20

21

22

23

24

25

1 C-E-R-T-I-F-I-C-A-T-E

2

3 I, Allan G. Kuhlman, a duly-appointed Official
 4 Court Reporter for the United States District Court for the
 5 District of Nebraska, do hereby certify that the foregoing
 6 transcript is a true and accurate transcript of the
 7 proceedings held in this matter.

8 In witness whereof I hereunto affix my signature on
 9 October 20, 2005.

10

11 /s/Allan G. Kuhlman

12 Allan G. Kuhlman

13

14

I-N-D-E-X

15

	Direct	Cross	Redirect
--	--------	-------	----------

16 WITNESSES:
 17 FOR THE PLAINTIFF:

17

Jeffrey Gassaway.....	27	96	
-----------------------	----	----	--

18

EXHIBITS:	OFFERED	RULED ON
-----------	---------	----------

19

12 Photograph 3902 N. 37th...	67	67
20 14 Rights Advisory Form.....	52	52
15 Rights Advisory Form.....	71	71
21 19 OPD Report.....	95	110

22

23

24

25